

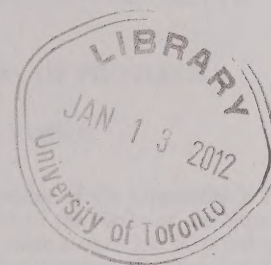
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SENATE

SÉNAT



CANADA



# DEBATES OF THE SENATE

1st SESSION

• 41st PARLIAMENT •

VOLUME 148

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OFFICIAL REPORT  
(HANSARD)

Thursday, December 8, 2011

The Honourable NOËL A. KINSELLA  
Speaker

## CONTENTS

(Daily index of proceedings appears at back of this issue).

[Translation]

## OFFICIAL REPORT

### CORRECTION

**Hon. Andrée Champagne:** Honourable senators, I would like a correction to be made to the official report of Tuesday, December 6, 2011. In the French version of my speech, on page 801, the first paragraph should read as follows:

... devraient mettre fin à la vie d'un malade inconscient ...

The word "inconscient" was omitted.

At the end of the same paragraph, following the words "et Dieu sait", the word "j'apprécie" should be deleted.

Therefore, in this paragraph, one word should be deleted and another word should be added.

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## THE SENATE

Thursday, December 8, 2011

The Senate met at 1:30 p.m., the Speaker in the chair.

[English]

Prayers.

## SENATORS' STATEMENTS

### INDUSTRIAL ALLIANCE PACIFIC GENERAL INSURANCE CORPORATION

#### PRIVATE BILL—MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-1002, An Act to authorize the Industrial Alliance Pacific General Insurance Corporation to apply to be continued as a body corporate under the laws of Quebec, and acquainting the Senate that they had passed this bill without amendment.

[Translation]

#### ROYAL ASSENT

The Hon. the Speaker informed the Senate that the following communication had been received:

#### RIDEAU HALL

December 8, 2011

Mr. Speaker,

I have the honour to inform you that the Honourable Marie Deschamps, Puisne Judge of the Supreme Court of Canada, in her capacity as Deputy of the Governor General, signified royal assent by written declaration to the bill listed in the Schedule to this letter on the 8th day of December, 2011, at 8:30 a.m.

Yours sincerely,

Patricia Jaton  
For the Secretary to the Governor General  
Stephen Wallace

The Honourable  
The Speaker of the Senate  
Ottawa

Bill assented to on Thursday, December 8, 2011:

An Act to authorize the Industrial Alliance Pacific General Insurance Corporation to apply to be continued as a body corporate under the laws of Quebec (*Bill S-1002*)

### QUESTION OF PRIVILEGE

#### NOTICE

**Hon. James S. Cowan (Leader of the Opposition):** Honourable senators, pursuant to rule 43 of the *Rules of the Senate*, I rise to give oral notice that I shall raise a question of privilege later this day. This question of privilege concerns the status of Bill C-18, in view of yesterday's Federal Court decision that the Minister of Agriculture "failed to comply with his statutory duty pursuant to section 47.1 of the Canadian Wheat Board Act" and found that the minister's conduct in introducing the bill into Parliament without meeting the requirements of section 47.1 was "an affront to the rule of law."

In light of this ruling, to proceed further with the consideration of Bill C-18 would breach the privileges of all members of this chamber by making them complicit in this breach of the law. Pursuant to rule 43(7), I am prepared to move a motion asking the Senate to refer the matter to the Standing Committee on Rules, Procedures and the Rights of Parliament, if His Honour finds that a prima facie case of privilege exists.

### BORDER ACTION PLAN

**Hon. Pamela Wallin:** Honourable senators, Canada and its largest trading partner, our friend and ally, have signed, finally, a new border action plan. Discussions began 10 years ago in the wake of 9/11 on securing our shared perimeter, but the steps taken then were small and timid. Now Canada and Prime Minister Harper have shown courage and confidence in negotiating a cross-border accord, the most significant bilateral deal since NAFTA.

The intent is to manage risk intelligently. As was the original intent of the perimeter security discussions, let us keep the bad guys out but trade and travelers moving. Now we will reduce waiting times for trusted travellers and free ourselves from the tyranny of small differences. Autos, one of our largest cross-border industries, has been stymied because the specs for auto frames are slightly different, as are cuts of meat or the content of Cheerios — costly and complicated rules and regulations that have absolutely nothing to do with sovereignty or security.

We will now inspect freight before it reaches our shared continent and those mutual inspections will mean once inspected, twice accepted. Restricting travel and trade is a win for terrorists. This accord is a win for our citizens and for our economic independence.



Our relationship is the largest and most important one in the world, despite periodic bouts of “buy-America” and protectionism south of the border, and we are already their largest energy supplier, despite electioneer politics and scaremongering about our energy sources. This trade generates nearly 40 per cent of our GDP; this nation’s income. More than 75 per cent of our exports go south of the border. We need to strengthen our trade deals and share information, because we have a country to manage and it is easier when there are rules, and we need to negotiate these things as two sovereign countries with powerfully shared interests.

Privacy concerns are unfounded. One will voluntarily provide no more information than one now voluntarily provides by using a passport or a NEXUS card. Sovereignty is enhanced because of economic security. It is improved. We are a trading nation, and being able to trade creates jobs and incomes and a secure and prosperous future.

### INTERNATIONAL HUMAN RIGHTS DAY

**Hon. Elizabeth Hubley:** Honourable senators, every December 10 the world recognizes International Human Rights Day. Sadly, this is in spite of the fact that not everywhere recognizes human rights. Far too many of the world’s citizens live under repressive regimes that do not allow them basic rights and freedoms.

I recently read a United Nations report about the atrocities committed by the Syrian government against its own people. It is a horror story of murder, rape and torture. Many of the victims were children, including a two-year-old girl who was shot by a soldier because he did not “want her to grow up to be a demonstrator.”

Honourable senators, this horrifying example of what the United Nations has termed Syria’s “gross human rights violations” has stuck with me. Like so many around the globe, I feel an incredible sense of anger and injustice, but I also feel a sense of hope because that Syrian soldier was right; that child would have grown up into a demonstrator.

The adoption of the Universal Declaration of Human Rights 63 years ago was really just the beginning. It was and continues to be the blood, sweat and tears of demonstrators who make those words mean something. The Syrian people will not give up their fight for human rights and we, as Canadians, cannot give up our support for them and for all people who still struggle for freedom.

• (1340)

### PRINCE EDWARD ISLAND

#### MINISTER OF VETERANS AFFAIRS COMMENDATIONS

**Hon. Catherine S. Callbeck:** Honourable senators, just before Remembrance Day, four exceptional Islanders were honoured with the Minister of Veterans Affairs Commendation.

This award, created by the Governor General, recognizes the recipient’s commitment and dedication to veterans. As the description of the award states, they are individuals who have

contributed in an exemplary manner to the care and well-being of veterans or to the remembrance of the contributions, sacrifices and achievement of veterans.

Mr. Reginald Noonan of Borden-Carleton served with the Royal Canadian Navy in the stewards’ department. While he spent just five years in uniform, he went on to be a strong supporter of veterans. He has been a member of his local branch of the Royal Canadian Legion for 38 years. He has served on many committees, has been a member of the executive, and serves as a flag-bearer at funeral services.

Mr. Alan Curtis of Alberton served with the Royal Canadian Air Force. He has held a number of executive positions with his local branch of the Legion in St. Anthony’s, as well as executive positions at the Provincial Command, including president. He was instrumental in creating *St. Anthony’s Book of Remembrances*, which lists all the branch’s veterans from the First and Second World Wars and Korean War.

Mr. Russell Gallant of Tignish is a retired captain of the Air Cadets. He has been actively involved with the cadets for many years and served as chairman of the sponsoring committee for 641 Squadron and as president of the Air Cadet League of Prince Edward Island. He was also a member of the Veterans Review and Appeal Board of Canada from 1994 until 2002.

Mr. Allan Glass of Charlottetown is a veteran of the Canadian Forces. He is a founding member and the current president of the Gulf War Veterans Association of Canada. He was also a founding member of the Legion’s Field of Honour for a cemetery in Cold Lake. Not only did he assist in raising funds, but he also helped design the project itself. He now serves on the Veterans Affairs Canada Stakeholders Committee.

Honourable senators, it is most fitting that these four gentlemen have been honoured with this distinction. They continue to provide outstanding service to their fellow veterans, their communities and their country. Please join me in thanking them for their many contributions and congratulating them on this remarkable distinction.

#### MS. ANNETTE VERSCHUREN, O.C.

**Hon. Jane Cordy:** Honourable senators, life lessons can come in many different forms and can be found at every turn. Hardships and strife can often be the teachers of the most valuable lessons and can give us the courage to explore paths we may never have otherwise considered. What makes us individual is how we react to our circumstances and whether we use these things to propel us forward or allow them to hold us back in some way.

The next woman I will present to you in my series on strong Cape Breton women is Annette Verschuren. Annette grew up on a dairy farm in Cape Breton. She is the middle child of Dutch immigrants who came to Canada in 1951. When she was only 10 years old, her father suffered a major heart attack and could



no longer handle the duties of the daily running of the farm, leaving much of the labour to Annette and her older brother. In her reflection on this period of her life, Verschuren notes that "the responsibility we had as children was a great advantage to me later on in life." She later learned, at the age of 16, that she had a hereditary kidney condition that would require surgery. Between the ages of 16 and 21, she underwent four operations.

Ms. Verschuren could no longer keep up with her brothers physically, but being by nature competitive, she decided the solution was to find ways to outsmart them. She took a Bachelor of Business Administration degree from St. Francis Xavier University. Upon graduation in 1977, she began her career at the Canada Development Investment Corporation, working on the industrial development side. She later switched to the coal side of the business, eventually becoming executive vice-president. She was the only woman in management at the time.

Annette spent the next three years working with the federal government before moving on as president of corporate development for Imasco. Between 1989 and 1992, she was president of her own company, Verschuren Ventures, and between 1993 and 1996 she was president of Michaels of Canada Inc. She thrives on taking something and building on it. When she left Michaels in 1996, she had built the company to 105 stores with 1,000 employees.

Ms. Verschuren's next adventure was a position she held until a year ago. She took over as head of Home Depot Canada and also oversaw the company's foray into China. She was responsible for the company's leadership position in the home improvement retail industry today.

In a recent interview with *The Chronicle Herald*, Verschuren addressed the question of what she will do next by saying, "Whatever I am going to do, I'm going to be extraordinarily passionate about." Passion seems to be a theme that runs through her life and one of the keys to her success. She not only demonstrates passion for what she does in her work, but also in giving back. She is currently a member with Liberty Mutual and serves as Chancellor of Cape Breton University. She is on the board of the Canadian Council of Chief Executives, is chair of Habitat for Humanity's National President's Council, and is spearheading the Corporate Council on Volunteerism. She will also act as co-chair of the Governor General's Canadian Leadership Conference for 2012 and will act as a mentor to 230 of the country's promising young leaders in a conference that will kick off in Halifax next June.

Annette Verschuren has been honoured with honorary doctorates from Mount Saint Vincent University, St. Francis Xavier University and Mount Allison University. She was given the Canada 125 Medal in 1992 and a Woman on the Move Award in 1994.

Annette Verschuren serves as a wonderful example to us all of how passion married with determination are necessary tools to succeed.

Honourable senators, I look forward to sharing more stories of influential Cape Breton women in the new year.

## ATTAWAPISKAT FIRST NATION

**Hon. Don Meredith:** Honourable senators, the situation on the Attawapiskat reserve in Northern Ontario has escalated to a boiling point where there is a large schism among the government, national chiefs and local band leaders. It is high time that we look at a more effective approach to solving this crisis.

Having grown up in an at-risk community and having worked with a number of youth and leaders in at-risk communities in Toronto, I can say that the current approach will not be effective in improving living conditions in Attawapiskat. In my experience, the way to tackle these kinds of issues is for government and community leaders to get on the same page for the benefit of the people they serve. We must make an attempt to see the situation from the other perspective.

When violence erupted in Toronto in 2002, I felt compelled to seek those who would be part of the solution, rather than pouring fuel on an already bad situation.

It is time to begin the necessary change to the lives of our First Nations people. It is in all of us to do what we can to stop the finger-pointing blame game and the unnecessary animosity, and let us find solutions together.

The First Nations National Chief Shawn Atleo was correct in saying:

We must stop lurching from crisis to crisis and move forward on a path to smash the status quo and fundamentally transform the current relationship between the First Nations and the Crown.

The Scriptures tell us — and this is something I am quite familiar with — to love our neighbour as ourselves. Where is the love in all of this confusion? As we hold our children and grandchildren this Christmas, I want us to think about the children across the country who are suffering while we enjoy our lives. Families will be hungry, cold, starving and thirsty, while we enjoy the luxuries that have been granted to us.

While leaders on both sides find fault with each other, there are families, especially children, whose well-being weighs in the balance. Under these unfortunate circumstances, I believe this is not the time to find fault with each other; it is time to come together as Canadians and parliamentarians. It is time to ask ourselves what we can do to bring relief to the children and families of this community.

All over the world we are in a season of giving, peace and joy. It is not a time for band-aid solutions and political squabbling. The people of Attawapiskat are just as deserving of a merry Christmas as the rest of us.

As we enter the holiday season, please join me, honourable senators, in asking what we can do to put an end to finger-pointing and to find a speedy solution to the crisis for the sake of the families and children of Attawapiskat.



[Translation]

## ROUTINE PROCEEDINGS

### PUBLIC SECTOR INTEGRITY COMMISSIONER

#### CERTIFICATE OF NOMINATION TABLED

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, I have the honour to table, in both official languages, the certificate of nomination of Mario Dion as Public Sector Integrity Commissioner.

### PERIMETER SECURITY AND ECONOMIC COMPETITIVENESS

#### TWO REPORTS TABLED

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, I have the honour to table, in both official languages, two reports entitled, *Joint Action Plan for the Canada-United States Regulatory Cooperation Council* and *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness*.

### THE ESTIMATES, 2011-12

#### FIFTH REPORT OF NATIONAL FINANCE COMMITTEE ON STUDY OF SUPPLEMENTARY ESTIMATES (B)

**Hon. Joseph A. Day, Chair of the Standing Senate Committee on National Finance,** presented the following report:

Thursday, December 8, 2011

The Standing Senate Committee on National Finance has the honour to present its

#### FIFTH REPORT

Your committee, which was authorized by the Senate on November 3, 2011, to examine and report upon the expenditures set out in the Supplementary Estimates (B) for the fiscal year ending March 31, 2012, herewith presents its report thereon.

Respectfully submitted,

JOSEPH A. DAY  
Chair

(For text of report, see today's Journals of the Senate, Appendix, p. 723.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

(On motion of Senator Day, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

### KEEPING CANADA'S ECONOMY AND JOBS GROWING BILL

#### SIXTH REPORT OF NATIONAL FINANCE COMMITTEE PRESENTED

**Hon. Joseph A. Day, Chair of the Standing Senate Committee on National Finance,** presented the following report:

Thursday, December 8, 2011

The Standing Senate Committee on National Finance has the honour to present its

#### SIXTH REPORT

Your committee, to which was referred Bill C-13, An Act to implement certain provisions of the 2011 budget as updated on June 6, 2011 and other measures, has, in obedience to its order of reference of November 24, 2011, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

JOSEPH A. DAY  
Chair

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

(On motion of Senator Carignan, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.)

• (1350)

### THE SENATE

MOTION TO RESOLVE INTO COMMITTEE OF THE WHOLE TO RECEIVE MR. MARIO DION, PUBLIC SECTOR INTEGRITY COMMISSIONER, AND THAT THE COMMITTEE REPORT TO THE SENATE NO LATER THAN ONE HOUR AFTER IT BEGINS ADOPTED

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(i), I move:

That, at the beginning of Government Business on Monday, December 12, 2011, the Senate do resolve itself into a Committee of the Whole in order to receive Mr. Mario Dion respecting his appointment as Public Sector Integrity Commissioner;

That the Committee of the Whole report to the Senate no later than one hour after it begins.



**The Hon. the Speaker:** Is leave granted, honourable senators?

[English]

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

(Motion agreed to.)

## PUBLIC SECTOR INTEGRITY COMMISSIONER

### NOTICE OF MOTION TO APPROVE APPOINTMENT

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, in accordance with Subsection 39(1) of the *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46, the Senate approve the appointment of Mario Dion as Public Sector Integrity Commissioner.

## MARKETING FREEDOM FOR GRAIN FARMERS BILL

### ALLOTMENT OF TIME FOR DEBATE— NOTICE OF MOTION

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That, no later than 5:30 p.m. on Thursday, December 15, 2011, the Speaker shall interrupt any proceedings then before the Senate and, notwithstanding any provisions of the Rules, put all questions necessary to dispose of all remaining stages of Bill C-18, An Act to reorganize the Canadian Wheat Board and to make consequential and related amendments to certain Acts, including the motion for third reading, forthwith and successively, without further debate, amendment or adjournment, and with any standing vote requested in relation thereto not being deferred but being taken immediately, with the bells to ring only for the first vote requested and only for 15 minutes;

That, if proceedings on the bill are completed earlier than the time indicated above, any standing vote requested in relation thereto shall, notwithstanding rule 67(2), be deferred, if there is a request for deferral by one of the whips, to no later than 5:30 p.m. on Thursday, December 15, 2011; and

That the Senate neither suspend pursuant to rule 13(1) nor adjourn on Thursday, December 15, 2011, until all proceedings relating to Bill C-18 have been completed.

## RECREATIONAL ATLANTIC SALMON FISHING

### ECONOMIC BENEFITS—NOTICE OF INQUIRY

**Hon. Michael A. Meighen:** Honourable senators, I give notice that, two days hence:

I will call the attention of the Senate to the economic benefits of recreational Atlantic salmon fishing in Canada.

[Translation]

## THE HONOURABLE TOMMY BANKS, O.C.

### NOTICE OF INQUIRY

**Hon. Claudette Tardif (Deputy Leader of the Opposition):** Honourable senators, I give notice that, two days hence:

I will call the attention of the Senate for the purpose of paying tribute to the Honourable Senator Tommy Banks, in recognition of his outstanding career as a member of the Senate of Canada and for his many contributions and service to Canadians.

[English]

## QUESTION PERIOD

### TRANSPORT

#### REMOVAL OF WRECK OF THE MV MINER

**Hon. Jane Cordy:** Honourable senators, my question is for the Leader of the Government.

A number of weeks ago, I raised the question of the wreck of the MV *Miner* in this chamber, which is grounded off the coast of Scatarie Island in Cape Breton. The federal government appears to be leaving the estimated \$24 million salvage costs to remove the grounded vessel solely on the shoulders of the Nova Scotian taxpayers.

The grounded vessel is in the immediate area of large and lucrative lobster grounds. Residents of the communities nearby are justifiably concerned about the environmental impact the grounded vessel could have on the fishery.

As I stated in this chamber previously, the application process is a federal responsibility, the permit process is a federal responsibility and the federal government is responsible for the federal towing and permitting regulations for ships being towed through federal waters; yet when something goes wrong, as it has in this case, the towing company has walked away from the mess, and the federal government has so far denied responsibility for the salvage.



When I raised the issue on November 23 in this chamber, the Leader of the Government in the Senate stated that she would pass on my comments and suggestions to the Minister of Transport. Could the leader provide the chamber with an update on the federal government's actions to secure the removal of the *MV Miner* as a result of her discussions with the minister, and could she also provide the chamber with an update on whether the Minister of Transport will take steps to tighten the regulations with respect to the towing and salvaging of abandoned ships?

**Hon. Marjory LeBreton (Leader of the Government):** I thank the honourable senator for her question. My answer is not much different than what I gave before. It is the responsibility of Transport Canada to promote safety in marine transportation and to protect the marine environment from damages due to navigational and shipping accidents.

• (1400)

The Department of Transport has lived up to its obligation. All dangerous toxic materials have been removed from the *MV Miner*, and Transport Canada continues to monitor the situation. In the view of Transport Canada, the ship does not impede the safe navigation of the area and does not pose an environmental risk. At this moment there is nothing more to report.

As I promised, I did pass on the senator's comments. I do not know whether regulations will be changed as a result of this incident. It suffices to say that the government is satisfied that the *MV Miner* poses no threat to the safety of navigation or to the environment.

**Senator Cordy:** People in the communities around Scatarie Island and around Cape Breton are concerned about the environmental damage that may occur. There are huge holes in the hull of the *MV Miner*. We know that the longer the ship remains off the coast of Scatarie Island the more the possible threat to the ecological system increases.

Why will the federal government not have the vessel removed now and sort out the financial legalities later? We know that legal wrangling can take years, and the damage to the lobster fishery could be severe.

The leader said that at this time the minister is not suggesting that the rules and regulations be tightened. I ask the leader again to please bring my concerns, and the concerns of the people of Cape Breton, that the rules and regulations should be tightened up. It should not happen that where the federal government has given the permit for a ship to be towed through the waters and for whatever reason the ship is grounded off the coast of the coastal provinces, we are left with the mess.

I would implore the leader to speak again to the Minister of Transport to say that it is extremely necessary that these regulations be looked at by the department and by the minister.

I ask her again why the government cannot remove the ship now, and we will worry about the legal wrangling later.

**Senator LeBreton:** I think it is clear that the Department of Transport, the government, and I have assured the honourable senator that all evidence suggests that there is no environmental or navigational danger with this grounded ship, the *MV Miner*. The federal government has been working closely with the province. There are some reports that the ship, as the honourable senator points out, is breaking up. Again, the important thing is that all toxic substances were removed from the ship and it poses no hazard to navigation; therefore, there is little more that can be done at the moment.

However I will, as the honourable senator suggests, pass on her concerns specifically with regard to future regulations for the movement of ships.

**Senator Cordy:** I would appreciate that, thank you. The ship is painted with paint that contains lead, so that is of great concern to the community surrounding it.

Main-à-Dieu & Area Community Development Association wrote to Minister of Transport Denis Lebel on November 1 of this year requesting an emergency meeting to discuss the removal of the *MV Miner*. As of today, December 8, they have not received even the courtesy of a reply — not a yes, not a no, not a maybe, not even a form letter.

Yet on November 23, the Minister of State for Transport, Steven Fletcher, was in Sydney to meet with, and I quote, "all concerned parties." The community development association represents Main-à-Dieu, a fishing community that could be most affected by this wreck, and they were not invited even though they had written to the minister and requested a meeting.

Would the Leader of the Government in the Senate please pass on to Minister Lebel that this issue is of great concern to the people of Main-à-Dieu, who are patiently waiting for a response from the minister. Perhaps she could also ask the minister to reply to the letter of November 1. There is no excuse for not replying. They might not like his reply, but he should at least have the courtesy to reply to them since their letter was written on November 1.

**Senator LeBreton:** As the honourable senator indicated, the Minister of State for Transport was in Cape Breton to meet with concerned parties. I do not and would not necessarily have information on the invitation list, or who made the decision about who was to be included in the meeting and who was not.

I wish again to point out to the honourable senator that the Department of Transport has fully lived up to its obligations with regard to the *MV Miner*. The ship does not pose a navigational or environmental hazard. However, I will as the honourable senator requests, be happy to pass on her remarks, concerns and suggestions to the minister to ascertain whether they received the letter and when a response might be expected.



## HEALTH

## SODIUM WORKING GROUP RECOMMENDATIONS

**Hon. Art Eggleton:** Honourable senators, to the Leader of the Government in the Senate, Health Canada's Sodium Working Group, which was disbanded by the government earlier this year, spent about \$1 million but came up with some recommendations to help bring down Canada's dangerously high level of salt consumption.

In its report, the working group cited the research estimating that a decrease in the average sodium intake of about 1,800 milligrams per day would prevent more than 20,000 cardiovascular disease events every year, resulting in direct health care savings of \$1.3 billion per year and saving lives.

In light of these benefits, why has Health Canada not committed to implement all the recommendations of its expert panel to reduce the salt intake of Canadians?

**Hon. Marjory LeBreton (Leader of the Government):** I thank the honourable senator. This follows up on questions asked previously by the senator's colleague, Senator Callbeck.

As I pointed out at the time, the government is committed to working with and helping Canadians to improve their health. We applaud the commitment of many groups who are participating in this work, such as the Heart and Stroke Foundation, who are also working to inform Canadians of the consequences of high sodium intake. Reducing dietary sodium, as the honourable senator would understand, is an important but also very complex undertaking. The government supports an approach that includes continued positive engagement with industry, provincial and territorial governments and other stakeholders. This is an ongoing effort. Many people are involved, starting with Health Canada. Hopefully this work will continue, not only to properly inform Canadians of the dangers of high intakes of salt but also to recommend measures to mitigate the problem.

**Senator Eggleton:** That is fine, but I think the point I want to make here is that time is of the essence. At a time when obesity, hypertension and other conditions linked to a high consumption of sodium are on the rise, and when health care costs are consuming a growing share of provincial budgets, the provinces are telling the federal government to focus more on the prevention of illnesses in Canada. We heard in our health accord examination in the Standing Senate Committee on Social Affairs, Science and Technology that prevention is key. This cannot be done by the provinces alone. The federal government must be on board. It does have responsibility for regulating food industry sodium levels in processed and packaged foods.

• (1410)

One of the key recommendations of the working group was that food companies should be required to use uniform serving sizes and put nutritional facts tables on food packages so that consumers can accurately compare sodium levels in similar

foods, rather than having a different schedule for each one. Now Health Canada says it is planning consultations next year about improvements to the nutrition facts tables appearing on the back of food packages.

We know what the facts are. Further delay is most unhelpful. Will the government move quickly to implement these important recommendations?

**Senator LeBreton:** Honourable senators, we are part of a collaborative effort with the provinces and territories. Joint efforts with provincial and territorial governments, industry and stakeholders will provide Canadians with the information and market choices they need in order to make healthy lifestyle decisions.

The intake of sodium is only one component of an overall effort by the Department of Health and the provincial and territorial governments that will, hopefully, lead to the prevention of chronic diseases, or at least the reduction of them. One thing that is particularly problematic at the moment, and will continue to be so, is obesity.

In short, the Department of Health is actively involved in this collaborative effort, and it is to be hoped that through the efforts of all levels of government and industry the information will be imparted to our population to ensure that healthier lifestyle choices are made.

**Hon. Percy E. Downe:** Honourable senators, Senator LeBreton talks about positive engagement and working with the industry, but in reality there has been no real progress on this file. As the honourable senator knows, the sodium content of food in Canada can vary from that in the United States. The sodium content in cereal is lower there than it is in the same product in Canada.

Other countries, such as Finland, have legislation forcing companies to reduce the amount of sodium in their products. Why would the Canadian government not consider that?

**Senator LeBreton:** The government is open to considering anything that can contribute to better information to help our citizens make healthy choices about the food they buy.

One positive aspect of the agreement between the President and the Prime Minister yesterday is making labeling and standards uniform on both sides of the border. That would be very helpful.

This is a complex matter. We are dealing with the provinces and territories as well as with industry. I can assure the honourable senator that the Department of Health and certainly the Minister of Health are taking this matter very seriously. Obviously, any models that other countries are using would be very helpful and informative as we work collaboratively to deal with the problem.

**Senator Downe:** The minister indicated that the government is taking the matter seriously, but where is the proof? What has happened? This has been going on for years. Finland changed its rules years ago. New York City incorporated voluntary reductions and is considering legislation if the reductions are not enforced by the industry.



Now we are told that, because of the agreement yesterday, we are fortunate that we will have American standards. Why can the Canadian government not be proactive? Why can we not have Canadian standards to lower the amount of sodium in our food?

**Senator LeBreton:** I think the honourable senator misunderstood what I said. I did not say that because of what was announced yesterday, which is only a working plan, we are going to be fortunate to have American standards.

I am saying that, because there are discrepancies in labeling between Canada and the United States, I am sure that any information that is helpful in informing Canadians, regardless of where it comes from, will be taken into consideration.

I wish to point out again that this is a collaborative effort among the federal government, the Department of Health, the provincial and territorial governments and industry. It is unfair to all levels of government and industry to suggest that nothing has been done. As a consumer, I am aware of many things that have been done by government and by industry in pointing out the sodium content of the products we buy.

**Senator Downe:** Can the leader point to any recommendations that have been implemented by the commission that was established by her government?

**Senator LeBreton:** As I said, the government and the Minister of Health are working with all levels of government. I cannot immediately pick out one specific recommendation to which we may be paying more attention than others.

[Translation]

**Hon. Céline Hervieux-Payette:** Honourable senators, I would like to begin by assuring the leader of the government that the word "sodium" is the same in English and French. There will therefore be no confusion on the labels.

I would like to remind her that our supermarkets carry more and more prepared food from various food companies and food chains, because of our modern lifestyle with both parents working, among other things.

I always make a point of looking at the sodium content since it is one of the leading causes of high blood pressure in Canada and many people die as a result of that every year. For example, a small slice of Kraft cheese in a grilled cheese sandwich contains 180 milligrams of salt. I was surprised because you would not think that such a small amount of food could contain so much salt.

Salt is used as a preservative. We need to have expiration dates and warning labels on all products, as they do in France. Often, an American product contains less salt than a Canadian product.

Thus, I agree with my colleague. I am simply asking, as my colleague mentioned, that we adopt similar measures to those in Europe.

[ Senator Downe ]

In 2012, on the eve of health sector budget reviews, we will have to think about the billions of dollars that are spent on food-related illnesses, and about indicating expiry dates on every product. It is just as important as indicating the salt content. Essentially, a product containing less salt will not last as long and could be hazardous if consumed.

When will the leader's government follow through on the committee's recommendations?

[English]

**Senator LeBreton:** I thank the honourable senator for the question. I take note of her comments with regard to families with two parents working perhaps not having the opportunity to shop properly. From my own perspective, I worked all my life and I bought all the groceries in my household. I read the expiry dates and I also read the contents of the food.

Our former colleague Senator Keon always championed our health care system's shifting to preventive health measures to ensure that people stay healthy and not have to suffer the consequences of poor eating habits. That is a huge challenge for us all, including the federal and provincial departments of health and industry.

I agree with the honourable senator that one challenge that all governments and society face is proper information and proper education on what exactly we are eating and what we can do to prevent illness. The whole problem of childhood obesity is an emerging health issue and if we do not respond now, it will become a huge concern. The Honourable Senator Nancy Greene Raine has been very active in this area. There are many things that the government can and must do. I will pass the concerns expressed by the honourable senator to the Honourable Leona Aglukkaq, Minister of Health. I can assure her that the government is not passing this off to other people but is dealing with the issues in collaboration with the provinces and with industry.

• (1420)

## VISITOR IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw your attention to the presence in the Prime Minister's Gallery of a distinguished young Canadian in the person of Ellie Sokolowski who is representative of the great future group of leaders that we have in our great country.

On behalf of all senators, welcome to the Senate of Canada.

**Hon. Senators:** Hear, hear.

## ABORIGINAL AFFAIRS AND NORTHERN DEVELOPMENT

### ATTAWAPISKAT FIRST NATION—FUNDING FOR THIRD PARTY MANAGEMENT CONSULTANT

**Hon. Sandra Lovelace Nicholas:** Honourable senators, my question is for the Leader of the Government in the Senate.



Honourable senators, we have learned that the third party private consultant hired by the Department of Aboriginal Affairs and Northern Development to look after Attawapiskat First Nations' accounts will be paid a total of \$180,000. This money will come from their budget. However, a recent report by Aboriginal Affairs and Northern Development Canada concluded that the third party management system is not cost-effective and hurts a band's ability to govern itself.

Why is the government forcing this First Nation to pay a consultant \$1,300 per day to run its finances, even though the government's own assessments say the third party management system is not cost-effective?

**Hon. Marjory LeBreton (Leader of the Government):** I thank the honourable senator for her question.

Our government has a plan to take concrete actions and is committed to ensuring, as all should be committed, that the residents, especially children, have warm and safe places to sleep. It is clear that significant investments in this community have not resulted in adequate living standards for their residents. The work of the third party manager will support the government's first priority, which is to address the community's immediate health and safety issues.

We urge the leadership in that community to work with the third party manager to deal with the issues that all should be concerned about: the safety and health of their residents.

## ORDERS OF THE DAY

### APPROPRIATION BILL NO. 3, 2011-12

#### SECOND READING

**Hon. Irving Gerstein** moved second reading of Bill C-29, An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2012.

He said: Honourable senators, I rise today to recommend passage of Bill C-29, an Act for granting Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2012, otherwise known as supply.

When I spoke in the spring of this year when we dealt with Bill C-8, the first appropriation bill of this fiscal year, I made reference to supply being a gift of Parliament to the Crown; and Bill C-29 is a \$4.3 billion gift.

Honourable senators, we are nearing Christmas, so picture this bill all wrapped up as a holiday present. The gift tag would say: "To Her Majesty the Queen, from her faithful subjects in the House of Commons." The entire package would be wrapped up in a big green ribbon.

Why a green ribbon, you ask? Why not a red one? The reason is that appropriation bills, also known as supply bills, are the purview of the other place. When their Speaker presents such bills to Her Majesty here in the Senate for Royal Assent, a green ribbon is tied around the parchment indicating the nature of the bill as an appropriation bill, which the Senate can debate but not initiate.

Honourable senators, this is the third appropriation bill of the fiscal year. The first, Bill C-8, reflected the Main Estimates, which were tabled shortly after the opening of Parliament on June 2. The second, Bill C-9, included items not fully costed in the Main Estimates. Both Bill C-8 and Bill C-9 were passed on June 26, 2011. We are now presented again with an appropriation bill, Bill C-29.

Honourable senators, this bill continues some key components of our economic action plan, including \$708.6 million in support of the Infrastructure Stimulus Fund; \$473.5 million in support of green energy initiatives and green projects such as the ecoENERGY for Aboriginal and Northern Communities Program; \$275 million to Atomic Energy of Canada to continue isotope production and to help fulfill its outstanding obligations at the time of divestiture of its reactor construction division; and \$163 million for the top-up of the Communities Component of the Building Canada Fund.

Honourable senators, I indicated in my remarks on Bill C-13, the budget implementation bill, that economic times continue to be difficult around the world. To that end, we must continue the pace of our economic action, Bill C-29 does just that. Maintaining the flow of money to those projects that are fiscally responsible will create jobs and stimulate our economy.

Honourable senators, I urge passage of Bill C-29 so that as Canadians are keeping track of their expenditures this holiday season, they can feel assured that their government is doing so as well.

**Hon. Joseph A. Day:** Honourable senators, I thank the Honourable Senator Gerstein for his summary of Bill C-29, the third supply bill for this fiscal year. In large part, I concur with his comments and description of what appears in the bill.

Honourable senators will be aware that there are at least two documents running parallel: Supplementary Estimates (B) and this supply bill. For this period of my time I will try to explain how these two different documents relate to one another here in the Senate. Honourable senators who were here earlier will know that I filed the report by the Finance Committee with respect to our preliminary study of the Supplementary Estimates (B).

• (1430)

It is important for honourable senators to understand and perhaps appreciate the differences between supplementary estimates in the House of Commons, and the supply bill that flows from it, and supplementary estimates here in the Senate.



The House of Commons has a procedure known as “ways and means.” For all taxing legislation, there must be a ways and means motion before the tax bill is introduced. As Honourable Senator Gerstein has pointed out, those initiatives with respect to bills, and requests of government for taxing legislation and to raise funds through taxing methods, must originate in the House of Commons. They must originate with a ways and means motion, which changes into a supply bill or a budget implementation type bill in due course in that other chamber.

We do not have a similar procedure here. We do not vote on the budget in this chamber. We vote on specific bills that give authority to spend money, but we do not vote on the budget. There is a procedure in the House of Commons referred to as a “concurrence” with respect to the estimates. In this instance we are talking about the Supplementary Estimates (B). There must be concurrence in the House of Commons in relation to the estimates before an appropriation bill can flow. We do not have that procedure or that requirement here in the Senate.

In the Senate we have a referral of the estimates to a committee for study. Then, when a supply bill comes along like this particular bill, Bill C-29, even though it is based on the Supplementary Estimates (B), not everything in Supplementary Estimates (B) has been studied by our committee or by this body. We do not concur in everything that is in the Supplementary Estimates (B).

Honourable senators, there is a danger in running a parallel between what transpires in the House of Commons and what transpires in the Senate. That is the first point that I wanted to make here. There are those two documents that have gone through, and procedures that have gone through both chambers, but they are treated somewhat differently.

Perhaps I could briefly talk about the relationship between the estimates and the corresponding appropriation bill here in the Senate. The estimates are referred to our committee and we are asked to report on those estimates. The estimates were referred to our committee on November 3. I can read that to you.

**Hon. Claude Carignan (Deputy Leader of the Government)**, pursuant to notice of November 3, 2011, moved:

That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (B) for the fiscal year ending March 31, 2012.

Honourable senators, I filed that report earlier this day.

The work we perform in the Standing Senate Committee on National Finance is to provide a more in-depth understanding of what is in the supplementary estimates and what the government is requesting in terms of expenditure for the next while. The important point is that we do not study every item. We do not have the time and the resources to study every item that is in the supplementary estimates. However, we do hope to inform the

Senate as a whole through our report, which I expect we will debate on Monday, on some of the items so that honourable senators are better versed and in a better position to vote on the \$4.3-billion supply bill that is before them.

Honourable senators, the fundamental role of Parliament has not changed from the beginning of the parliamentary system, and that is to scrutinize expenditures of the government. When I speak of government in this instance, I am referring to the executive branch of government; that is the Prime Minister and the ministers in the departments.

In the supply cycle we have frequent supply bills. In June we had the main supply bill. We had Supplementary Estimates (A) that we had to review at the end of June. In March we look at interim supply, and usually we close out with Supplementary Estimates (C) supply bill. There are a number of these supply bills and the estimates that relate to them that come along from time to time. Even though this process is repetitive, it must not become routine. That is a very important point for honourable senators to keep in mind.

Some of us in this chamber believe that the report which comes from a review of the supplementary estimates by a committee must be debated and must be passed before we can deal with a corresponding supply bill. There is a difference of opinion in relation to that role concerning the report from the committee and this Senate Chamber voting on the supply bill.

This point comes up from time to time. Let me refer honourable senators to a number of comments that have been made. The first quote I will read is from the Honourable Noël Kinsella, who at the time was Deputy Leader of the Opposition.

In the past, I understand that we have debated an Estimates report from our National Finance Committee before a supply bill came to us. When the supply bill did come, I understand that there was no debate on it as such. Perhaps Senator Murray, with his corporate memory, could verify or shoot that down.

Senator Murray stated:

... the convention —

— that is an established practice —

— has grown up, at the insistence of Her Majesty's Loyal Opposition, whatever the party, that before we will entertain a supply bill, the report of the Standing Senate Committee on National Finance must have been presented or tabled. It must be before the Senate.

Then Honourable Senator Oliver, who has been very active in the Finance Committee in the past, on debate on this issue in 2005, said:

Honourable senators, I should like to add a few remarks to those made respecting the fourth interim report on the estimates for 2005-06. At the outset, I would commend Senator Day for his excellent presentation.



As you know, the Standing Senate Committee on National Finance has generally been interested in government spending as expressed in the estimates documents and related bills. As is customary with this committee, several meeting dates were set aside for the review of 2005-06 estimates.

It has also become a convention in this place that the Senate does not proceed with an appropriation bill based on estimates until the Standing Senate Committee on National Finance has reported on its review of the estimates.

• (1440)

Honourable senators, in most instances in the past, this has occurred. We have debated the report, and it has been adopted by the chamber before the corresponding supply bill has arrived. That has arisen primarily out of courtesy and, as Senator Murray has stated, out of "wise and prudent parliamentary practice." Whether that is a convention or whether that is wise and prudent parliamentary practice is something that will have to be decided by this chamber. However, it need not be decided on this particular occasion because the report has been filed. I fully expect that, if the Honourable Senator Carignan calls the report before the supply bill, on Monday next, the order will be met.

Others believe that it is not necessary to have the report from the committee adopted, but merely to have it here in the chamber. Sometimes they run parallel, but it really depends on when the supply bill is received from the House of Commons.

There are those who do not accept this as a convention or a practice. The convention or practice, honourable senators, is something that is not written. It is something that we learn through debate in this chamber. It is something that we learn serving on committees. It is an unwritten rule that helps us in the decorum and the flow of business within our chamber.

The Supplementary Estimates (A) report, honourable senators, was a document that we dealt with in June of this year. I have to give you some background with respect to that because they were running at the same time, in June, as we were dealing with the main supply for the rest of the year, from July 1 on. There was a report for that set of estimates. There was a report we were working on for Supplementary Estimates (A). Everything went according to the procedure that I have just described to you with respect to the Main Estimates, but, with respect to Supplementary Estimates (A), we needed to get our report translated. When we adjourned on Thursday evening, as we normally do, it was indicated that we would be back on Monday to deal with it. However, the Senate was called back on Sunday to deal with a back-to-work legislation, which was deemed an important piece of government business. While certain senators were back here, it was decided to dispose of the other outstanding matters so that we could go into our adjournment for the summer. The result of that action was that the report that had been translated and that was ready to be presented on Monday never did get presented to this chamber. However, we did, in this chamber, pass the supply bill that related to those Supplementary Estimates (A).

There are now those who say that that activity that took place in June of this year means that we no longer have the convention, that there never was a convention, that we do not need to study,

that there is no reason why we should study the supplementary estimates, and that this chamber can go ahead and pass the supply bill without any knowledge of the supplementary estimates or any work by the committee. There are those who are promoting that as a position at this time. I am very, very hopeful that honourable senators can be convinced that that was an extraordinary situation. There was confusion with the back-to-work legislation and with the two different supply cycles that were going on at the same time. I hope that we can get back on track with respect to a report coming from the Finance Committee so that this body can be educated as to what is in the supply bill you are being asked to vote on.

We are back on track this time, honourable senators, but comments have been made that no report is even necessary. The quick answer to that is that when the supplementary estimates were referred to Finance we were asked to report back — I read that to you earlier on — to study and report. Our mandate is to do just that, to report. That is the quick answer.

However, there is also a logical answer saying that that cannot be right, that we cannot refer the document, the supplementary estimates, or any estimates to Finance and not expect Finance to report them back. The whole purpose for referring them is to educate the chamber so that the chamber can vote in a more informed manner on the supply bill that goes along with it.

We can draw a parallel with the work that we sometimes do in relation to pre-study, honourable senators. If a pre-study is being conducted and we do not finish it, and the bill arrives here, then we just pick up the bill and carry on. We are more informed because we started the study before the bill came. If we finish the pre-study and then the bill comes, then we have a report on the pre-study that informs all senators about what is in the bill, and we move very quickly through the stage where we would normally go to committee. Sometimes we will go to committee and come back the same day, just for form purposes.

We cannot draw a total parallel between the two; studying the estimates before a supply bill is not exactly the same as a pre-study, but there are a lot of parallels that are helpful to us.

Honourable senators, it is understandable that the government, the executive branch of government, would want documents passed and their supply passed. We understand that there is pressure on those who support the government to get those documents passed. These problems typically arise when there is a change in government, and the new government, or the new majority, is adjusting to its new-found position. That was the case in 1984, when Allan MacEachen was the Leader of the Opposition in this chamber. The government was Mr. Brian Mulroney's Progressive Conservative government at the time. The new executive branch of government, at that time, could not understand why their supply would even have to be studied here in the Senate by a committee. They wanted a document, this particular supply-like legislation, passed quickly, and Mr. MacEachen, who was in the enviable position of being Leader of the Opposition but controlling a majority of members and votes in the Senate, said, "Absolutely no way; this must be studied. We must do the job that is expected of the opposition."



• (1450)

I can tell you, honourable senators, that that has been the situation by governments on both sides since then. Let me read from 2001, December 11, the Honourable Fernand Robichaud, Deputy Leader of the Government. This is Mr. Chrétien's government. The Liberals are in power, so Honourable Senator Robichaud is speaking on behalf of the government in the Senate:

Honourable senators, with respect to Bill C-45, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002, it is our usual practice to consider the report by the Standing Senate Committee on National Finance, which studied the forecasts.

This is the government saying, "We will wait for this to be properly studied, even though we have the majority and we can move this through more quickly. We will not do that because it is contrary to the purpose and intent of the role of the Senate."

I do hope, honourable senators, that we will all recognize that that is a convention that must be followed and that should be followed. Those of us in opposition recognize and respect that the government needs supply bills and budget implementation bills and that they are treated in a different manner from other bills. We on the National Finance Committee are aware of that, and I do hope that the government members will understand the particular role that has to be played by the opposition in relation to those same pieces of legislation. With that kind of respect that each of us shows to one another, this institution will perform a meaningful role as intended by the drafters of our Constitution.

In summary, that which occurred in June of this year should not be viewed as an exception to a convention or practice. It was an exception, but it should not be viewed as destroying or saying that there was no convention. It is like an exception to the rule proves the rule, and that is what I am suggesting to honourable senators. There is no proof that there was intent to do away with the convention of dealing with a report from the Standing Senate Committee on National Finance or whatever committee the estimates are sent to prior to dealing with a supply bill that goes along with it. The various conventions that we have in this place are extremely important to the proper functioning of the Senate, and I ask us all to recognize those conventions and to support them.

Let me conclude on this aspect of my intervention as to why we have conventions by quoting from an article by Mr. Peter Russell, professor at the University of Toronto. He is describing these unwritten conventions or practices, and he says:

In each case we rely on conventions, a body of constitutional or legal ethics . . . for guidance on the proper use of legal powers.

I have, on behalf of the National Finance Committee, filed a report on Supplementary Estimates (B). I look forward to talking about what is in that particular report and those items that we studied in the Main Estimates when that comes up for debate.

[ Senator Day ]

Honourable senators, the typical exercise that I perform with respect to a supply bill is to look at the schedule to the bill because, in effect, there is a very short body to the bill and then schedules. I compare the schedules of this supply bill to the Main Estimates we have looked at, and I find them to be the same, which means that we did study in the estimates the same document that we are being asked to vote on at second reading now.

Honourable senators, I will save my other comments for third reading debate with respect to the bill itself.

#### POINT OF ORDER—SPEAKER'S RULING RESERVED

**Hon. Gerald J. Comeau:** Honourable senators, Senator Day has carefully laid out his reasoning in order to tie the estimates report to the supply. I think he did a great job. He did indicate that it was because of convention, practice and good order for both sides to be able to work collegially together on looking at this very important subject of supply.

However, having said that, I know that the issue of tying the two together has been discussed for quite some time. I do not think we have ever come up with any certainty on it. Yes, we can point to certain practices that have, on occasion, been followed and, on occasion, have not.

Having said that, if we do wish to establish it as a convention, as a chamber, we should have it as a part of our written practices, not unwritten practices but written practices under either our rules or a ruling from His Honour, possibly. With that in mind and given that on this date we do have the report before us, if His Honour were to take it under advisement to come back to this chamber, it would not delay this current round of supply. I think it would be incumbent on His Honour to give us clarification in the form of a ruling. Therefore, I would ask if His Honour would take it as a point of order to give us clarification on this whole issue of tying the estimates report to supply.

**The Hon. the Speaker *pro tempore*:** The chair will take the matter under advisement. Thank you very much.

Is there further debate? Are honourable senators ready for the question?

**Some Hon. Senators:** Question.

**The Hon. the Speaker:** It was moved by the Honourable Senator Gerstein, seconded by the Honourable Senator Braley, that this bill be read the second time. Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

(Motion agreed to and bill read second time.)

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

(On motion of Senator Carignan, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.)



## SAFE STREETS AND COMMUNITIES BILL

## SECOND READING—DEBATE ADJOURNED

**Hon. Bob Runciman** moved second reading of Bill C-10, An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts.

He said: Honourable senators, I am very pleased to speak today on Bill C-10, An Act to enact the Justice for Victims of Terrorism Act and to amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts.

This bill, which is also known as the Safe Streets and Communities Bill, brings together, in one comprehensive bill, nine law-and-order bills that died on the Order Paper in the last Parliament. The bill fulfills the commitment in the June 2011 Speech from the Throne to “quickly re-introduce law-and-order legislation to combat crime and terrorism.” There are five parts to the bill.

Part 1 includes reforms to deter terrorism by enacting the Justice for Victims of Terrorism Act and amending the State Immunity Act.

Part 2 includes sentencing enhancements to better reflect the serious nature of child sexual offences and serious drug offences, and to prevent the use of conditional sentences for serious violent and property offences.

• (1500)

Part 3 addresses post-sentencing issues and includes reforms that address the availability of pardons, offender management and accountability, and that strengthen the international transfer of offenders regime.

Part 4 proposes reforms to the Youth Criminal Justice Act to more effectively deal with violent and repeat young offenders.

Part 5 proposes amendments to the Immigration and Refugee Protection Act that seek to better protect vulnerable foreign workers against abuse and exploitation in high-risk Canadian work places.

Honourable senators, I think it is fair to say that Bill C-10 has attracted significant debate in the other place as well as in the media. As is often the case with something that attracts such a high level of interest, this debate has sometimes been shaped by a misunderstanding of the bill. As a result, the real merits of the individual and collective components of the bill have not always been given due consideration or been fairly acknowledged.

Moreover, this debate does not always reflect an appreciation that Bill C-10 is not the government's only response to the serious issues raised by crime. For example, the debate does not always acknowledge the government's overall efforts, such as

the following: the federal National Anti-Drug Strategy, launched in 2007, that is investing \$588.8 million in three areas, namely, prevention, treatment and enforcement; the National Crime Prevention Strategy, that currently provides \$45 million annually; the National Strategy to Protect Children from Sexual Exploitation on the Internet, that is currently providing \$71 million over five years to combat online child sexual exploitation; or the \$85 million commitment to the Aboriginal Justice Strategy, programs that help to steer Aboriginal people away from a lifestyle of crime.

Honourable senators, the government understands the need for crime prevention and treatment of offenders and is willing to back up its commitment with resources. That should not be forgotten during the discussion of this bill.

In terms of the actual amendments proposed by Bill C-10, Part 1 of the safe streets and communities act proposes to enact the victims of terrorism act, and to amend the State Immunity Act. These amendments should be familiar as the Senate approved them as Bill S-7 in the previous session.

The new legislation proposes to enable victims of terrorism to sue, in a Canadian court, an individual or organization that perpetrated an act of terrorism as well as those that supported the terrorist entity, including listed foreign states, for loss or damage as a result of an act of terrorism or omission committed anywhere in the world on or after January 1, 1985.

It would also amend the State Immunity Act to lift immunity from those states that the government has listed for support of terrorism. This part of Bill C-10 was amended before the Standing Committee on Justice and Human Rights in the other place.

The first amendment would allow a court to hear a matter when the plaintiff is a Canadian citizen or a permanent resident. This amendment was needed because citizenship or residency would not necessarily have been sufficient to establish a real and substantial connection to Canada.

The second amendment creates a rebuttable presumption that the defendant is liable if it supported a listed entity that caused or contributed to the act of terrorism that is the subject of the lawsuit. The effect of this amendment is to reduce the burden of proof on the victim of terrorism.

Over the years, I have spoken with Maureen Basnicki, whose husband Ken died on 9/11. She and many other victims of terrorism, including members of the Canadian Coalition Against Terror, have advocated tirelessly for these changes. I would like to publicly thank them for their perseverance and congratulate them on this achievement.

Part 2 of Bill C-10 proposes amendments to the Criminal Code addressing child sexual offences and conditional sentences of imprisonment, and to the Controlled Drugs and Substances Act. The child sexual offences amendments seek to ensure that all sexual offences involving a child victim are treated equally seriously and consistently, as well as to prevent the commission of child sexual offences.



Consistent and adequate treatment of all forms of child sexual abuse would be achieved by imposing mandatory minimum penalties for offences involving child victims that currently do not carry minimum penalties, increasing the minimum penalties for some child sex offences that already impose them, and by increasing the maximum penalties on some other offences.

The preventative measures seek to prevent the commission of sexual offences against children by targeting preparatory conduct. They do so through the creation of two new offences and by requiring courts to consider imposing conditions to prevent suspected or convicted child sex offenders from engaging in conduct that could facilitate sexual offences against children.

The proposed new offences would prohibit providing sexually explicit material to a young person for the purpose of facilitating the commission of a sexual offence and would prohibit agreeing or arranging with another person to commit a sexual offence against a child. These amendments were proposed in former Bill C-54.

Part 2 also proposes to bring much needed clarity to the availability of conditional sentences of imprisonment. They would expressly state that a conditional sentence is never available for offences punishable by a maximum of 14 years or life imprisonment; for offences prosecuted by indictment and punishable by a maximum penalty of 10 years that result in bodily harm, involve the import or export, trafficking and production of drugs or involve the use of a weapon; or for listed serious property and violent offences punishable by 10 years and prosecuted by indictment such as criminal harassment, trafficking in persons and theft over \$5,000. These reforms had been proposed by former Bill C-16.

Honourable senators, the last of the Part 2 amendments should be familiar to all honourable senators as they are the same as those passed by this chamber in former Bill S-10 in the last Parliament.

These proposed amendments to the Controlled Drugs and Substances Act would impose mandatory minimum penalties for the most serious drug offences, namely, the offences of production, trafficking or possession for the purposes of trafficking, importing and exporting or possession for the purpose of exporting of Schedule I drugs such as heroin, cocaine, methamphetamine and Schedule II drugs such as marijuana.

These offences would only carry a mandatory minimum where there was an aggravating factor, including where the production of the drug constituted a potential security, health or safety hazard or the offence was committed in or near a school.

I note that one amendment was made by the house Justice Committee to clause 41. This amendment would ensure that the mandatory minimum penalty would only apply to instances where more than 5 plants but fewer than 201 plants are produced for the purpose of trafficking and where any of the specified

aggravating factors apply. In other words, the mandatory minimums would not apply to the production of five plants or less.

These amendments would also allow a court to delay sentencing while the addicted offender completes a treatment program approved by the province under the supervision of the court or a drug treatment court approved program and to impose a penalty other than the minimum sentence if the offender successfully completes the treatment program.

Honourable senators, Part 3 proposes post-sentencing reforms to better support victims and to increase offender accountability.

• (1510)

Amendments to the Corrections and Conditional Release Act, which were previously proposed in former Bill C-39, would recognize the rights of victims, and enhance offender accountability and responsibility through increased emphasis on the correctional plan and a modernization of the disciplinary system for inmates.

These amendments would ensure victims' participation in conditional release hearings by the Parole Board of Canada, as well as better inform victims about the behaviour and management of offenders. They would also enshrine in law the requirement for a correctional plan to be completed for each offender, a plan that sets out expectations and objectives.

Part 3 also includes proposals to amend the Criminal Records Act that were previously included in former Bill C-23B. These amendments rename a "pardon" as a "record suspension" to better reflect what it actually does.

They expand the period of ineligibility to apply for a record suspension from three to five years for summary conviction offences, and from five to ten years for indictable offences.

They also make a record suspension unavailable for individuals convicted of sexual offences against minors and for persons who have been convicted of more than three offences prosecuted by indictment and for each of which the individual received a sentence of two years or more.

Lastly, Part 3 would amend the International Transfer of Offenders Act. These amendments were previously proposed by former Bill C-5. They codify a number of additional factors to consider when the Minister of Public Safety is deciding whether a Canadian who is convicted abroad is granted a transfer back to Canada to serve the remainder of his or her sentence.

Part 4 proposes amendments to the Youth Criminal Justice Act to strengthen its handling of violent and repeat young offenders. These amendments had been introduced, for the most part, as former Bill C-4.

These reforms include highlighting the protection of the public as a principle, making it easier for pre-trial detention of youths charged with serious offences or who have a criminal history;



ensuring that prosecutors consider seeking adult sentences for the most serious violent offences; prohibiting youth under the age of 18 from serving a sentence in an adult facility; and requiring police to keep records of extrajudicial measures, such as diversion programs.

The existing Youth Criminal Justice Act is guided by overarching principles applicable to youth who commit offences in Canada. Specific principles are also included in the legislation to further direct officials at various stages of the youth justice system.

Bill C-10 does not abandon these principles. It does, however, provide justice system officials and youth justice courts with additional tools to help deal with the small group of repeat and violent offenders who may not be adequately dealt with under the current Youth Criminal Justice Act provisions.

I would also note that one amendment to the French version of the Declaration of Principle in Clause 168 was made by the Justice Committee in response to a recommendation by the Quebec Minister of Justice and Attorney General. Specifically, this amendment changed:

[Translation]

“encourager la réadaptation et la réinsertion sociale” was replaced with “favoriser la réadaptation et la réinsertion sociale”.

[English]

I hope that was understandable.

[Translation]

I am learning French. I am not a good student, but I am working hard.

[English]

Honourable senators, the government supported this recommendation, and that change is now reflected in Bill C-10.

Lastly, Part 5 of the safe streets and communities bill proposes amendments to the Immigration and Refugee Protection Act. These amendments seek to protect foreign nationals from humiliating and degrading treatment, including sexual exploitation and human trafficking, by enabling immigration officers to refuse work permits to those foreign nationals and workers who may be in jeopardy. These amendments were previously proposed in former Bill C-56.

That is what is in this bill. Now, honourable senators, I would like to offer some brief comments on some of the criticisms of Bill C-10 that we have heard over the last few weeks.

First, let me talk about the claim that this bill is being rushed through Parliament. Honourable senators may have noted from my remarks that every part of this legislation was the subject of previous bills.

One measure, regarding changes to the Immigration and Refugee Protection Act, has been the subject of four previous bills. Seven of the nine predecessor bills were studied extensively at the committee level in either the Senate or the other place in previous sessions. I am confident that the Senate’s review of Bill C-10 will be thorough.

These bills have been around for years. They have been debated and studied for hundreds of hours. Our Prime Minister told Canadians last April during the election campaign — the ultimate public consultation — that these measures would be brought forward as part of a comprehensive package.

We have also heard plenty about the injustice of mandatory minimum sentences. There is a certain irony in that criticism when it comes across the Senate floor and from their colleagues in the other place.

Mandatory sentences have been a part of the Canadian Criminal Code since 1892, but by 1969 only one minimum penalty remained — driving while impaired. In 1976, five new mandatory minimum sentences were added to the code, as well as three offences carrying a mandatory life sentence. In 1995, Bill C-68 created 19 new mandatory minimum sentences of imprisonment.

The next year, another mandatory minimum was instituted. In 2005, six more mandatory minimum sentences were added.

More than 30 mandatory minimum sentences of imprisonment were created in those years. What do the years 1976, 1995, 1996 and 2005 have in common? No, the Leafs did not win the Stanley Cup. The Liberals were in power in each of those years and a Liberal government added those mandatory minimum sentences.

We believe that certain conduct deserves a consistent approach to punishment. As a personal note, I hear about this regularly because I have the good fortune of hearing the views of rank-and-file police officers on a regular basis. Three members of my family — two daughters and a son-in-law — are front-line police officers.

The lack of consistency is a problem in our justice system. I encourage honourable senators to read the Alberta Court of Appeal’s decision in *R. v. Arcand*, from December 1, 2010. This is a case where a man was given a 90-day intermittent sentence — which means served on weekends — and probation for raping an unconscious girl. The appeal court took the opportunity to talk about the lack of consistent sentencing in Canada. Here is what the Court of Appeal had to say:

... judge shopping is alive and well. ... Without reasonable uniformity of approach to sentencing amongst trial and appellate judges in Canada, many of the sentencing objectives and principles prescribed in the *Code* are not attainable. This makes the search for just sanctions at best a lottery, and at worst a myth. ... If the courts do not act to vindicate the promises of the law, and public confidence diminishes, then Parliament will.



We have heard a lot about the use of minimum sentences for drug crimes. I must tell honourable senators that over my years as a justice critic and minister in Ontario there was real frustration in policing ranks — from top to bottom — with the lack of deterrence for grow ops.

It has been a revolving door — modest fines and penalties for significant grow operations; a very cheap cost of doing business for the growers and their organized crime sponsors; consequences that not only erode police morale and the public's faith in the justice system, but also feed the factory of organized crime, a factory that uses the proceeds of these criminal activities for things like purchasing and smuggling weapons into this country.

Criminologist Darryl Plecas' research on the drug trade found that the rate of grow ops in British Columbia is nearly triple the national average, and they are getting bigger, more sophisticated and more dangerous.

• (1520)

The average suspect had a 13-year criminal history and an average of 7 previous convictions. Only 16 per cent of convicted offenders went to jail, with an average sentence of 4.9 months.

Catch and release is not working. The minor interruptions caused by legal proceedings are just a cost of doing business. Bill C-10 ensures that there are some real consequences to engaging in this type of conduct.

I would like to talk for a moment about another frequent criticism of Bill C-10, that it represents the Americanization of the Canadian justice system, and that Canada is embarking on a failed path just as Americans are realizing long periods of incarceration do not work.

This is one of the most common and least convincing criticisms of this bill, promoted heavily by the opposition and our friends at the CBC, which even sent a reporter to Texas on the taxpayers' dime to point out the folly of the Conservative approach.

Honourable senators, the sentences in this bill bear absolutely no relationship to the type of sentences in the United States. Someone with 100 marijuana plants found guilty of production for the purpose of trafficking in Canada will be subject to a minimum sentence of 6 months under this bill. Under current federal law in the United States, they would face a sentence of 5 to 40 years.

This bill raises the mandatory minimum for possessing and accessing child pornography from 14 days to 90 days. The maximum when proceeding by indictment is 5 years. Last month, a Florida man with no previous criminal record was sentenced to life without parole for this same offence.

According to the International Centre for Prison Studies, the incarceration rate in the United States is 743 per 100,000 population, compared to Canada's 117 per 100,000 population. The notion that a few new and increased mandatory sentences represent the Americanization of Canada's justice system is ludicrous, and any honest comparison bears that out.

We have also heard a lot about the bill's provisions for the treatment of young offenders. Quebec, in particular, has objected to the amendments to the Youth Criminal Justice Act; and in this chamber on Tuesday, we heard a senator suggest the bill may contravene the UN Convention on the Rights of the Child. I respectfully disagree.

The amendments to the Youth Criminal Justice Act do place a new — and I believe welcome — emphasis on public safety; we make no apologies for that. However, in some respects, they increase judicial discretion.

That is right. They increase judicial discretion by allowing judges to consider the traditional sentencing principles of denunciation of crime and deterrence of the specific offender, and by making it easier to keep violent young offenders in pre-trial custody. That is what this is all about — keeping dangerous people off the street.

Under the current provisions of the Youth Criminal Justice Act, even if the courts had serious concerns related to threats to public safety posed by a young offender, they were effectively handcuffed, their discretion to impose a pre-trial detention very limited.

Yes, we believe that there are rare occasions when the public may be better protected if the name of a young offender is published and that there are times when the Crown should consider the possibility of seeking an adult sentence, but this bill retains judicial discretion in these cases.

What the bill does is clarify and express the factors that judges should consider in exercising their discretion, including specifically with regard to the notion that repeat and more serious offenders should be recognized as raising different public considerations than first-time shoplifters, for example.

We have also heard from our friends in Queen's Park and Quebec City about the additional costs they will face as a result of Bill C-10, costs that they believe the federal government should pick up. I found it interesting that the most aggressive provincial criticism about costs is coming from the two provinces that have been the least effective at managing public finances. Be that as it may, I remind these governments that this federal government unlike its predecessors, has substantially increased provincial transfers each and every year.

Canadians know the costs of crime in both human and financial terms and they want something done about it. A recent Leger Marketing survey found 77 per cent of Quebecers believe that crimes are not adequately punished, which makes me question if Mr. Fournier and Mr. Charest are really speaking for Quebecers when they criticize Bill C-10.

Honourable senators, this government will continue to enact the policies that Canadians have told us they want, and that we believe are necessary to better protect communities from serious and violent crimes and to ensure that offenders are held more accountable. I urge all honourable senators to support Bill C-10.



**Some Hon. Senators:** Hear, hear.

**The Hon. the Speaker *pro tempore*:** Further debate? Honourable Senator Boisvenu.

Honourable Senator Tardif, are you ready to speak now?

**Hon. Claudette Tardif (Deputy Leader of the Opposition):** Point of order — I just wanted to reserve the time for the second speaker on our side.

**The Hon. the Speaker *pro tempore*:** That is not a problem.

[Translation]

**Hon. Pierre-Hugues Boisvenu:** Honourable senators, as you know, I have been advocating for victims of crime in Quebec and in many Canadian provinces for eight or nine years now. I will not repeat the story of my daughter, who was murdered by a repeat offender. In 1999, that man raped a woman over the course of 12 hours. For his crime, he received two sentences: 18 months for rape and another 18 months for forcible confinement. The judge thought that since it was the same victim, the same criminal and the same circumstances, the two 18-month sentences could be served at the same time. Therefore, he was incarcerated in a provincial prison. If his sentence had been longer or if he had served it in a federal prison, he would have had a right to services. But he was incarcerated in a provincial prison for 18 months, instead of 36 months, and he was released after serving one-sixth of his sentence: after three months. What message was sent to this offender? The message was that raping and assaulting a woman is not important.

For the past month, I have been speaking to a number of media outlets in Quebec, where I have often been the target of personal attacks. Because victims do not have the right to speak. Silence is the victim's prison. But when I created this association in 2005-06, I wanted to empower victims and enable them to speak out.

For the past month, I have been talking a lot in Quebec about the merits of Bill C-10. I have been informing the public. Many Quebecers are against Bill C-10 because they are not familiar with its content. We must therefore inform Quebecers and Canadians about the content of this bill. Interestingly enough, once people are familiar with the bill's content, they are in favour of it.

Last week or two weeks ago, Minister Fournier was in Ottawa speaking out against the bill, saying that it would cost Quebec a fortune and that Quebec would not enforce it. However, 77 per cent of Quebecers are in favour of the bill. The minister asked to see studies and statistics, and I gave them to him. But do you know where these statistics on crime came from? They came from the Quebec public security department.

The statistics show that, in Quebec, offences against property have dropped by 32 per cent since 1997, while offences against the person, under the Criminal Code, have increased by 20 per cent.

The minister came to tell us that crime rates are going down in Quebec. It is true in the sense that fewer cars are being stolen or fewer pairs of gloves are being taken from the corner store. However, offences against the person — the type of crime that is

addressed in Bill C-10 — increased by 20 per cent. It is not Senator Pierre-Hugues Boisvenu or the Conservatives who are saying it, but the Government of Quebec.

Many victims appeared before the other chamber's committee to support Bill C-10. The president of the Association of Families of Persons Assassinated or Disappeared, whose brother was killed in 2004, appeared before the committee. Ms. Lacasse, whose son was killed and abandoned by minors, two of whom reoffended, also appeared.

• (1530)

Others included Ms. Jong, whose father survived the atrocities of the Second World War and came to Canada for a better life, only to be killed after being struck repeatedly with a shovel by two young people, two minors; Sheldon Kennedy, a retired hockey player, who has spoken publicly about being sexually abused; Yvonne Harvey, who gave evidence about how her daughter was killed in cold blood; and the Union of Canadian Correctional Officers, which supports this bill.

Victims have been supporting this bill not only for the past month or year, but since 2004-05. They have been asking the Conservative government, which was elected in 2006, for such a bill. Half of all the requests came from victims of crime.

It is not that the Conservatives want to be spiteful towards criminals, but they want to be fair towards the victims, who are often left by the wayside in the judicial process. We want to provide children and teens with greater protection from sexual predators.

Perhaps you recall the television program *J.E.* that aired a few weeks ago on TVA? The program demonstrated just how easy it is for sexual predators to find victims on the Internet. Strangely, the predator in the program said it was the first time he had done that, and that it was the first time he had been caught. A closer look at his criminal record revealed that he had already been convicted nine or ten times.

We also want to bring in harsher sentences for organized crime and drug-related offences. About two months ago, I met with some stakeholders in Longueuil. Do you realize how many young people aged 12 or 13 are working as prostitutes? In Longueuil alone, about 200 young girls are working as prostitutes. Why? To pay off their drug debts.

Here is how it happens: some 40-year old guy uses a 16-year old to sell drugs to kids as young as eight. That is what is happening on the street. Who are we trying to punish severely? The 40-year old adult who is using young people.

What is the pattern? At eight or nine years old, I start smoking pot and at 12, I have drug debts. In order to pay them off, I have to work as a prostitute. These young people will be permanently scarred. We will have to pay for their health care and they will drop out of school. The burden on society is huge. And to think that some people oppose harsher sentences for these slimeballs.



And what does the 12-year-old boy who has been smoking since he was eight do? If, at the age of 12, he needs money to pay his drug debt, he breaks into homes to steal. Last year, in Quebec, there was a 21 per cent increase in home invasions. Unfortunately, these are counted as economic crimes. However, home invasion is one the crimes that leaves the greatest mark on the elderly and women who live alone. The problem is that 50 per cent of these crimes are not reported. The bill seeks to end this type of trafficking and home invasion.

I was looking at the sentences that could be given in cases of rape or sexual assault of children. Less than two months ago, in Victoriaville, a man who sexually assaulted a child for two years was sentenced to 45 days in prison. What? Forty-five days? Weekends? In Quebec, the prisons are full.

The accused reports to the prison on the Friday night to serve his sentence. What does the warden tell him? Go home. There is no room. The accused passes by the victim's house on his way home that night. What sort of message does that send victims? It says that there is no justice and that the system works in favour of criminals. These are the Friday cases. An offender is sentenced on Friday, reports to the prison that night, and is sent home because there is no room. That is our justice system. We want to put a stop to this type of thing.

We want to eliminate pardons for repeat offenders. Do you know what a pardon is? It means the person's criminal record disappears from the police's radar. I would like to remind you that, last year, almost 800 sexual predators obtained pardons, many of whom had reoffended three or four times. The predator lingers near an elementary school. The police officer checks the licence plate, but there is no longer any record. Does that protect the public? No. These criminals who reoffend three or four times must be kept in custody, and we must be able to obtain information about them.

That is what Bill C-10 seeks to do. It also seeks to make our schoolyards safe.

According to statistics, nine out of ten victims of sexual crimes do not report them. Why? There are three reasons. First, victims are afraid that once they get to court, they will be held responsible for the rape. Second, victims worry about the court proceedings. In Quebec, the length of proceedings in criminal cases increased from 100 days in 2001 to 200 days last year; 200 days could certainly cause a victim to suffer a mental breakdown or lose a job. Who often pays the price of the proceedings? The victims.

The third fear concerns lenient sentences. After a two-year court case, the sentence is handed down: three months in jail for raping a woman. It does not pay for a victim to press charges because the justice system favours criminals by giving them lenient sentences. Sentences must fit the crimes committed; otherwise we do not have a justice system but a system that protects the rights of criminals.

Victims are asking this government to make changes and that is what we will do, quickly, because that is what we promised.

Can anyone oppose harsh sentences in cases of serious crimes against seniors? Or when crimes are committed by adults in a

position of authority — a hockey coach, teacher or other person? Can anyone oppose harsh sentences for people who assault children? Who can stand up and say: no, we must protect the criminals and give them a second, third or fourth chance? Who will stand up and say that? Therefore, we need harsh sentences to indicate that we will not tolerate such crimes. When children, women, and seniors are assaulted, there is zero tolerance. Children are the wealth of society, and when they are assaulted they carry the burden their entire lives. The criminal, on the other hand, will have forgotten about it in three months' time. He will undoubtedly move on to another child because the justice system has just told him, "It's no big deal."

We have to change the rules, and introduce rigour, responsibility and accountability. Rigour because it affects the credibility of justice. Responsibility, in order to send a message to criminals who commit a crime that they cannot commit a second or third crime. Accountability, to ensure that when criminals are jailed, their only responsibility is to rehabilitate themselves. They will be provided with the tools to do it and if they do not make the effort, would they really deserve early release, known as parole?

We have all raised our children in this manner. We receive our just rewards and punishment must be in keeping with the seriousness of the crime or error committed. Punishing someone is not a sin. Punishment is not the opposite of rehabilitation; the two are complementary. The person who commits a crime must reflect upon it. The criminal is isolated and given a sentence: think about what you did to the victims, the damage that was caused, and start thinking about how you can rehabilitate yourself. We will provide you with the tools to do it. That is the purpose of incarceration. If every time a criminal commits a crime he serves it in the community, what happens? We are returning him to his criminal environment and believing that he will be rehabilitated by that environment. That is maical thinking.

Is Canada living in a rehabilitation fantasyland? Can every criminal be rehabilitated? According to Dr. Tremblay from the Université de Montréal, no, they cannot. Three per cent of criminals cannot be rehabilitated. Doctor Bergeron, a psychologist in the Canadian prison system, works with criminals. He said, "a sentence, incarceration and rehabilitation go hand in hand. When there is no sentence for the first offence, it sends the wrong message. It says that the crime that was committed is not serious, especially in crimes where there is recidivism."

Far too often children are killed by someone under the influence of alcohol. If we look at the criminal's profile we find he was previously arrested eight, nine or ten times. His first sentence might have been 45 days of community service. The second sentence is three months in the community and the loss of his driver's licence. What kind of message are we sending? That it does not matter if you drink and drive as long as you do not kill anyone.

• (1540)

Bill C-10 provides harsher sentences for the 20 per cent of criminals who commit 70 per cent of the crimes. That is the reality. It would mean that the incarceration rate in Canada is 70 per cent — not to be confused with recidivism. Some might



say that the rate of recidivism is only 20 per cent, but the re-incarceration rate is 70 per cent. In Quebec, criminals return to prison eight times; in Canada, four times. Can rehabilitation be successful after the first time? Our measures will not cost anything. There are savings to be had. We have to make sure that the criminal never wants to return to prison and that he takes charge of his life. Bill C-10 will set things straight.

For the past three or four years, people have been saying that crime rates are going down. That is great. This may be because of the measures we have adopted, and if these measures have the same effect, in five or six years, our prison population will have stabilized and will no longer cost as much. People throw out figures like \$2 billion or \$3 billion, or, as I saw in a Quebec study this morning, \$17 billion over a 40-year period. They looked at the figures including capital assets, maintenance and Mr. Dupuis' plan to build a new prison in Quebec City, which was announced in 2006. Bill C-10 is being blamed for everything that is wrong in the world, but it will cost \$80 million. There you have it. Bill C-10 is needed for the victims.

[English]

**The Hon. the Speaker *pro tempore*:** The honourable senator's time has expired.

Do you want to ask for more time?

**An Hon. Senator:** Five minutes.

[Translation]

**Senator Boisvenu:** Honourable senators, I will conclude with some statistics on youth crime.

For years we have heard that the Quebec model is the best model in the world. That may be true if we compare it to itself, but when compared to others, it is not as good. These statistics are not mine; they are from Juristat, by Statistics Canada. Do you know it? It is free; everyone can access it.

In Quebec, between 2000 and 2010, crime among 12-year-olds went up by 40 per cent; among 13-year-olds it rose by 30 per cent; and among 14-year-olds, it rose by 5 per cent. Among 15- to 17-year-olds — who are targeted by this bill — crime by 16-year-olds in Quebec increased by 10 per cent, and among 17-year-olds it increased by 20 per cent.

I am sure the people working with the Quebec model think it is perfect, because they do not want to be affected by Bill C-10. People say that crime is going down, but when I look at the numbers, I see, yes, it is going down for white collar crime and property crime, but in the case of crime that affects the most vulnerable members of society, crime is going up and that is what Bill C-10 targets. It would cut down on crimes against people.

(On motion of Senator Tardif, debate adjourned.)

## FIRST NATIONS ELECTIONS BILL

### SECOND READING—DEBATE ADJOURNED

**Hon. Dennis Glen Patterson** moved second reading of Bill S-6, An Act respecting the election and term of office of chiefs and councillors of certain First Nations and the composition of council of those First Nations.

He said: Honourable senators, unfortunately, I will be speaking in English for the rest of my speech.

[English]

Honourable senators, last year Canadians marked an important achievement in our country's history. We commemorated the fiftieth anniversary of members of First Nations communities being, at long last, granted the right to vote in federal elections. This was an initiative of a hero of mine, the Right Honourable John George Diefenbaker, who also appointed the first Aboriginal senator to this chamber.

I believe our government is still living up to that governance commitment. In the past five years we have taken every opportunity to uphold and advance the rights and freedoms of Aboriginal people in Canada. Let me cite three examples of that commitment to action.

First, we made sure that First Nations people who live on reserves have full access to and protection under the Canadian Human Rights Act. Second, we amended the Indian Act to make it possible for some 45,000 men and women who were unfairly not recognized as status Indians to finally gain that status and their associated rights. Third, we recently introduced Bill S-2 to ensure that residents of First Nations communities have rights and protections similar to those of other Canadians with regard to matrimonial property such as family homes.

We have clearly expanded on the accomplishment of 50 years ago; let there be no doubt about that. However, we are not done yet. Today I am pleased to lead debate on a bill that provides the foundations for First Nations governments to meet the aspirations of their people, Bill S-6, the First Nations elections act.

This bill puts in place a clear, consistent, reliable framework that First Nations communities can use to elect strong, stable effective governments. The bill makes it possible for First Nation communities to hold modern elections, and modern elections for First Nation communities are something I am convinced all Canadians support.

That is what this bill does. What does it represent? It constitutes another milestone achievement in our efforts to provide First Nations with the right tools and frameworks for modern government. Calling Bill S-6 a milestone achievement is, I believe, no exaggeration. We have only to consider the specific provisions of the bill and what these provisions will set in motion to understand its importance. Before I get into the nuts and bolts of Bill S-6, I would like to share with honourable senators the story of how this bill came about.



The First Nations elections act is legislation coming from the Government of Canada, of course, yet in truth it is really a bill envisioned, conceived and developed by First Nations for First Nations. Two groups of First Nations merit special recognition for bringing this bill to light. The first is the Assembly of Manitoba Chiefs, an organization that represents dozens of First Nations communities in that province and that jump-started the process that led to Bill S-6.

Several years ago, the organization identified two vital requirements to improve the legitimacy and effectiveness of First Nations governance in the province, a common election day and longer terms of office. The Assembly of Manitoba Chiefs then organized and held a series of consultation sessions through which the province's First Nations agreed that new legislation should be developed to legally sanction a common day for election and longer terms of office.

The second group that deserves special recognition is the Atlantic Policy Congress of First Nations Chiefs. It came to the same conclusions independently. In fact, this organization used a series of workshops, discussion groups and engagement sessions to hear from a wide range of First Nations leaders and members as well as election experts from throughout the Atlantic provinces. Together they compiled a list of sound reforms to the existing Indian Act process of First Nations elections. A general assembly of the Atlantic Policy Congress of First Nations Chiefs then adopted a resolution calling on the federal government to develop a new law based on these reforms.

• (1550)

In 2009, members of the Standing Senate Committee on Aboriginal Peoples undertook a study of First Nations elections. At some 20 hearings in Ottawa, Manitoba and British Columbia, the committee heard a wealth of testimony from a wide cross-section of First Nations members and leaders, including band managers, representatives of tribal councils and heads of national and provincial organizations. These committee hearings enabled First Nations members and leaders to share their views on both the need for reform and the specific changes they wanted implemented.

The hearings also further legitimized the need for pan-Canadian consultations that would make it possible for First Nations leaders from all regions of the country to provide their thoughts on existing recommendations and on the reform process as a whole. That is exactly what happened. Representatives of the Assembly of Manitoba Chiefs and the Atlantic Policy Congress of First Nations Chiefs communicated with leaders of the 241 First Nations communities that hold elections under the Indian Act, inviting feedback on recommended election reforms. These two organizations also set up websites where information was posted and where members of First Nations communities could relay their comments on reforms.

Feedback was overwhelmingly positive. As a consequence, the department took the recommended election reforms and prepared Bill S-6, and when a draft version of the bill was ready, the Minister of Aboriginal Affairs and Northern Development wrote

to every band council elected under the Indian Act election system and outlined the new bill's contents. In this letter, he encouraged band councils to share the changes with their community members and to provide all comments on the draft bill directly to him. Although some concerns were raised, not a single negative statement or comment on the essence of this initiative and the contents of the bill was made.

I would like to take advantage of this opportunity on behalf of the minister and the government to thank the people who did the vital work to make Bill S-6 such an impressive piece of proposed legislation. I would also like to pay a special tribute to several individuals. I want to thank former Assembly of Manitoba Chiefs Grand Chief Ron Evans for his inspired leadership. I want to thank Chief Lawrence Paul, the late Chief Noah Augustine, and Chief Candice Paul and Chief Morley Googoo, past and present co-chairs of the Atlantic Policy Congress of First Nations Chiefs, for the instrumental roles they played in bringing Bill S-6 to life. These six people saw the clear need for reform to the Indian Act election system and took action to bring about the constructive changes contained in this bill. In short, they recognized a number of weaknesses that prevent First Nations communities from electing strong, stable, effective governments and found legislative solutions to address them.

Some of these weaknesses are glaring. For one, the requirement to have an election every two years hinders First Nations chiefs and councillors from carrying out long-term projects, working closely with partners and investors, and taking advantage of many economic development opportunities to improve the lives of First Nations people. With a two-year mandate, most of the chiefs and councillors have barely begun their work when they must start planning for the next election. That is just the start of the problems. Under the current Indian Act election regime, there is no way to prevent one person from running and being elected both chief and councillor. The mail-in ballot system is also open to abuse, and with no defined offences and penalties, it is nearly impossible to prosecute corrupt practices. If corrupt, illegal or abusive acts are alleged, officials of Aboriginal Affairs and Northern Development Canada must start and oversee a lengthy appeals process.

Bill S-6 will change that. It will be a 21st century law that was designed to meet the needs of 21st century First Nations communities — a modern law that will bring about modern elections for modern First Nations communities. Under a First Nations election act, chiefs and councillors will be elected to terms of office for four years, and no individual can be a candidate for more than one office in the same election; and that is not all. Bill S-6 will allow First Nations communities to line up their terms of office and hold elections on the same day. A minimum of six First Nations must agree to take advantage of this provision. This means that neighbouring First Nations communities can work cohesively on long-term projects that require their joint efforts without having the work stalled time and again by an election in one or more of their communities.

At the same time, the bill will allow regulations to be made to tighten the nomination of candidates and the distribution of mail-in ballots, and to permit the holding of advance polling stations. Unlike the Indian Act election regime, the system under Bill S-6



will have clearly defined offences and penalties that will enable authorities to lay charges for illegal activity in connection with First Nations elections and will allow the courts to impose fines and jail sentences on those convicted. Bill S-6 will remove the department and the minister of Aboriginal Affairs and Northern Development from the appeals process. All election appeals will shift to the courts, where federal, provincial and municipal election results are already challenged.

Many of the recommendations developed, refined and approved by First Nations leaders and members from across Canada are included in the bill. Those are the provisions of Bill S-6. However, what if a First Nations community prefers the existing Indian Act election system and wishes to continue holding its elections under it? The short answer is that it can. The proposed First Nations elections act is an opt-in piece of legislation and is not mandatory. To be covered by the new law, a band council must pass a resolution to add its name to the schedule of First Nations to which the new election system will apply. It need not be locked into this system either. Even if a First Nations has agreed to operate under the new system, it can opt out at a later time by developing its own community election code, submitting that code to a community vote, and receiving a favourable outcome.

With all the advantages of Bill S-6, including the ability for First Nations who have opted in to opt out at a later time, I am confident that many of the 241 First Nations in Canada that hold elections under the Indian Act system will take advantage of the new bill. The benefits it will bring about are too good to ignore. Bill S-6 will discourage questionable election practices and encourage practices that are reliable, consistent, effective and less open to abuse. It will reduce the number of frivolous and lengthy appeals. It will create the kind of political stability that attracts investors and business owners and thereby generates new jobs and new economic development in First Nations communities. It will enable First Nations leaders to lay the political, legal and organizational groundwork for their communities to become what the Federal Framework for Aboriginal Economic Development calls “opportunity-ready.” It will empower elected First Nations officials to plan and carry out long-term projects and work much more closely and productively with partners, investors, neighbouring municipal governments and other First Nations communities.

Honourable senators, these are all outstanding benefits, yet the greatest benefit of the proposed First Nations election act goes much deeper than electoral mechanics and business outcomes. By putting in place a clear, consistent, reliable election system, Bill S-6 will make it possible for First Nations to elect strong, effective governments that are truly reflective and capable of improving the lives of the people these governments serve. Strong, stable and effective governments are something all Canadians believe in and all Canadians deserve: the freedom to elect your representatives according to a system that meets your needs, corresponds with your values and helps you reach your goals.

Honourable senators, we can help make that possible. I urge honourable senators to adopt Bill S-6.

(On motion of Senator Tardif, debate adjourned.)

• (1600)

**NATIONAL STRATEGY FOR CHRONIC CEREBROSPINAL VENOUS INSUFFICIENCY (CCSVI) BILL**

**SECOND READING—DEBATE CONTINUED**

On the Order:

Resuming debate on the motion of the Honourable Senator Cordy, seconded by the Honourable Senator Peterson, for the second reading of Bill S-204, An Act to establish a national strategy for chronic cerebrospinal venous insufficiency (CCSVI).

**Hon. A. Raynell Andreychuk:** Honourable senators, I rise to speak to Bill S-204, An Act to establish a national strategy for chronic cerebrospinal venous insufficiency; CCSVI, as it is known.

MS is a lifelong, disabling and often unpredictable illness. It impairs the ability of brain cells to communicate effectively with the spinal cord, causing physical and cognitive problems. Symptoms include fatigue, chronic pain, speech and swallowing difficulties, problems with muscle use and mental “fog.” MS is usually diagnosed in people between the ages of 15 and 40. Two-thirds of those affected are women.

Canada has one of the highest rates of MS in the world. Every day, some 55,000 to 75,000 Canadians confront the crippling symptoms and emotional anguish of a disease that is poorly understood. Tens of thousands more Canadians count MS sufferers among their friends and families. They shoulder the challenges of the disease through loss of income, increased medical expenses, lower quality of life and family stress.

For years, experts have sought to understand the causes of MS and to develop treatments to improve the lives of those it affects. In Canada, such efforts have been undertaken by federal agencies, such as the Canadian Institutes of Health Research, research centres in our universities and teaching hospitals, professional associations and other organisations such as the Canadian Institute for Health Information, the Multiple Sclerosis Society of Canada and the Canadian Network of Multiple Sclerosis Clinics.

In 2009, MS science and research were set on a new trajectory following the publication of a study by the Italian vascular surgeon Dr. Paolo Zamboni. Dr. Zamboni found a strong correlation between MS and a condition known as chronic cerebrospinal venous insufficiency. CCSVI is a narrowing of the veins in the neck that impedes outflow of blood from the brain and spinal cord. By applying a procedure known as venous angioplasty to open up the affected veins, Dr. Zamboni achieved significant results.

The MS patients in his study reported improvements in sensation, strength and coordination. Famously dubbed the “liberation procedure,” the therapy was internationally acclaimed, bringing hope to MS sufferers around the world. Two years later, health scientists have not been able to reproduce Dr. Zamboni’s results.



Medical professionals today agree that the discovery of the liberation procedure represents a critical step forward in our knowledge and approach to MS research. They also agree that it is neither a cure for MS, nor a risk-free treatment with guaranteed results.

Health professionals in Canada emphasize that the liberation procedure applies venous angioplasty in a new portion of the body — the internal jugular — where the practice is considered both invasive and potentially dangerous. Evidence from patients, including Canadians, who have undergone the liberation procedure around the world, shows that the therapy can have vastly different results from one patient to the next. Many have reported relief of their symptoms, but others have reported only temporary improvements or no noticeable change. In the worst cases, patients have reported a deterioration of their condition.

Before making the liberation procedure a standard treatment in Canada, it is critical to establish, through recognized scientific processes, its safety and effectiveness for treating MS, such as Canada does in other cases. Allow me to quote from the Canadian Network of MS Clinics:

The MS community has seen and heard of many “treatments and claimed cures” over the years, which have usually turned out to be false. Until the observations regarding CCSVI can be verified and the potential treatment based upon these findings is shown to be safe and effective the CNMSC strongly recommends that patients DO NOT seek to have their veins studied by techniques that have not been standardized, nor should patients be asking for treatments based on these findings that have not been proven.

One of the reasons Canada has one of the best health systems in the world is that the medical establishment in this country does not react impulsively every time a new treatment comes onto the market. Rather, our approach is to build upon apparent medical breakthroughs. This entails investigating evidence surrounding the new treatment, applying our own ethics and standards, and conducting further research to fill any gaps.

As stated on their website, Health Canada’s goal is:

... for Canada to be among the countries with the healthiest people in the world.

To achieve this goal, Health Canada:

... relies on high-quality scientific research as the basis for [its] work.

This is the stage at which CCSVI and the liberation procedure are presently being handled. Our health experts are taking necessary steps to bridge remaining gaps in the science around the liberation procedure to ensure Canadians are given the safest and best treatment modern science has to offer.

Canadians understandably want answers as quickly as possible, but the time spent building evidence around CCSVI and the liberation procedure — and this could take two or three years — is time well spent by those who wish to be sure.

Let me give honourable senators an example. Many of you will have seen in the news recently that Health Canada suspended its conditional approval of the breast cancer drug Avastin. It took this step after reviewing data from clinical trials showing that life-threatening risks associated with the drug, including heart attacks and strokes, outweigh its potential benefits. These benefits, it turns out, do not include reduced tumour size or longer life expectancy.

This story underscores the critical role of science in establishing that new medical procedures and products meet the standards of safety and efficacy observed by the medical establishment in this country.

The Government of Canada has taken important steps to build the evidence base around MS, CCSVI and the liberation procedure: First, working with a range of Canadian stakeholders, including provinces, territories and medical professional associations, last September the Government of Canada established the Scientific Expert Working Group to look at the linkages between MS and CCSVI.

Second, in March of this year the government announced that it would commit \$2 million toward the creation of a standardized Canadian Multiple Sclerosis Monitoring System. The system will track patients’ health and symptoms over time, including from those who have undergone the liberation procedure abroad, and furnish critical information to be used by all those involved in the fight against MS.

Third, in June this year Health Canada promised to fund phase 1 and phase 2 clinical trials, to establish the safety and side-effects of the liberation procedure.

On November 25 of this year, Health Canada announced that the Canadian Institutes of Health Research, in collaboration with the MS Society of Canada, is ready to accept research proposals for these trials. In the coming weeks, research teams will compete for funding. Their submissions will be assessed by an international peer review committee and the successful proposal will be announced in March 2012.

Meanwhile, resources are already being mobilized toward MS research in the provinces, including in Newfoundland and Labrador, the three Prairie provinces and in British Columbia. My own province, Saskatchewan, counts more than 3,500 people living with MS, giving it the highest MS prevalence rate of any province or territory in Canada.

• (1610)

In October 2010, the Government of Saskatchewan became the first in Canada to commit funding to CCSVI research.

A total of \$5 million was committed to help Saskatchewan MS patients participate in clinical trials of the liberation procedure.

In the coming months, some of this funding will enable between 80 and 90 MS patients from all over the province to participate in clinical trials of the liberation procedure in Albany, New York.



In this manner, Saskatchewan is helping Canadians who so choose to access the liberation procedure relatively close to home, while advancing science around CCSVI.

It is doing so while putting measures in place to ensure that the patients are well informed about the treatment and the possible associated risks.

I applaud my province for taking this initiative, for helping Canadians who need it most to access the liberation procedure under the safest conditions possible, until such time as the procedure is approved in Canada.

Now, let me be clear: While I see such provincial initiatives as complementing the efforts of the federal government, they by no means alleviate the federal government's responsibilities in this matter.

The federal government is uniquely positioned to coordinate knowledge on the scale needed to achieve the scope and speed of advances in MS research.

As I have said, it has committed to doing so through establishing a national monitoring system and funding clinical trials.

In moving the second reading of Bill S-204, Senator Cordy described the bill as a mechanism to pressure the government to deliver on these commitments.

Much as I respect and share Senator Cordy's intent, I do not believe a bill is the correct mechanism.

I am concerned that this good intent could create an unintentional precedent and a modality in this chamber that I believe falls outside of our purview.

First, I believe that Bill S-204 risks politicizing the process through which scientific experts set Canada's health research priorities.

Second, I believe Bill S-204 could set a precedent of legislating deadlines on action to which the government is already committed.

Third, and most concerning to me, Bill S-204, in my opinion, goes beyond the normal scope and mandate of our legislative responsibilities.

In *Fraser v. P.S.S.R.B.*, Justice Dickson wrote in 1985, and I quote:

There is in Canada a separation of powers among the three branches of government — the legislature, the executive and the judiciary.

In broad terms, the role of the judiciary is, of course, to interpret and apply the law; the role of the legislature is to decide upon and enunciate policy; the role of the executive is to administer and implement that policy.

The federal public service in Canada is part of the executive branch of Government. As such, its fundamental task is to administer and implement policy.

I am concerned that by requiring specific actions to be completed by specific deadlines, Bill S-204 goes beyond law-making into the realm of policy administration and implementation.

I believe that MS patients in Canada deserve access to the safest and best treatment modern medicine has to offer.

Once the liberation procedure has been fully proven to meet these criteria, I fully support making it available to Canadians suffering from MS. However, I believe we in the legislative arm should not interfere in the process by which health policy experts ascertain the safety and efficacy of a medical treatment.

I also believe we should not create legislation for which, if its requirements are not met, no clear course of redress for patients would be available.

Whom can Canadians hold accountable should clinical trials not be completed by the deadline stipulated in the bill? As we would be the ones introducing it, how do the patients reach us for redress?

We need to allow Canadian health experts to continue their accelerated efforts on this issue to establish the safety and efficacy of the liberation procedure and the link between MS and CCSVI.

Now, I know that Honourable Senator Cordy has, in addition to Bill S-204, also moved an inquiry on the government's progress in making the liberation procedure available in Canada.

I congratulate her on that effort. It is through such an inquiry, rather than through a bill, that I believe we in the Senate can encourage progress on MS and CCSVI in Canada.

Honourable senators, we should encourage an approach that will preserve Canada's standing as a centre of world-class medical research, in which citizens have access to the best and the safest treatment, rather than the latest fad.

Let us chart an approach that ensures that science, not politics, delivers the relief that MS-affected Canadians deserve.

Thank you.

**Hon. Jane Cordy:** Would the honourable senator accept some questions?

**Senator Andreychuk:** Yes.

**Senator Cordy:** Thank you very much. The honourable senator would no doubt understand that I would disagree that a senator does not have responsibility to speak out and introduce bills. I believe we have a responsibility, on behalf of Canadians who ask for our help, to see if we can make a difference, which is why I brought forward the bill.



Those I spoke to who have MS and have received the treatment outside the country or who are waiting for it to be done in Canada at some point, hopefully, are greatly concerned that the principles of the Canada Health Act of accessibility and universality are not principles that are open to them.

You said that evidence from patients who have received the treatment is vastly different. I agree, and I think I commented on that in my speech, which was quite a long time ago, and said that, in some cases, the results are what one would call miraculous. In some cases, the results are minimal, and, in others, one would ask whether there has in fact been significant improvement or whether there has not. I appreciate that.

However, in March of this year, the minister said that there would be a registry to collect data from those who have had the angioplasty procedure done. I have not heard anything about the registry. I am wondering whether it has been implemented or brought forward and whether it will collect data from those who have received angioplasty outside the country. I agree with comments the honourable senator made that it is extremely important that we have made-in-Canada information. I think the registry would go a long way, but, to the best of my knowledge, unless the announcement was made quietly, I have not heard that the registry is in place.

**Senator Andreychuk:** I do not speak for the government, so I do not know if my answer will be complete. However, my understanding is that the registry is being worked on and that it would include data. That is part of the problem, the privacy and capability of getting evidence from outside of Canada.

It was supposed to be as complete as it could be, and my concern is not that we move fast. I think we should be moving faster, as quickly as possible.

I do not think we can put in a bill a section that says that certain things have to happen by certain dates. If the medical people cannot come together, how can we tell them that the government must have something in place? It would be less than safe, less than certain, less than complete by dates that we fix.

I am also concerned that if we take the mantle of how the government should implement, which is their right in the division of powers, how does the patient, who may suffer the consequences of whatever procedure, have redress? I think of the Red Cross and the Ministry of Health in the blood transfusion cases. Even with access to those agencies, it took a long time. In this case, would the rebuttal from the government be that they did it this way because they were enacted to do so by the Senate and the House of Commons? My fear is that that is where the bill — and some parts of the bill I agree with — goes beyond what I think is good legislative practice, and it goes into the executive arm's responsibility. I want to hold them accountable. That is why I like the honourable senator's inquiry. Let us put pressure on them. Let us make sure that they are accountable to us and that they are moving as quickly as possible. I will undertake to contact the Minister of Health today, or tomorrow at the latest, to determine where this registry is.

• (1620)

**Senator Cordy:** I appreciate that. Thank you.

[ Senator Cordy ]

I am also wondering about the clinical trials that the minister announced in June. She gave a bit of information, but not a whole lot. They are phase 1, clinical trials. We are dealing with venous angioplasty. When angioplasty first started in Canada, it was in 1976, and when it came into Canada in 1976, it was started without clinical trials because the procedure had been done in other countries. I am wondering why clinical trials are starting in phase 1, when angioplasty is done for other non-MS procedures in hospitals.

I received an email on November 29 from a gentleman in British Columbia. He talked about open-heart procedures that are being done. A procedure was first done on humans in June 2011, and this experimental treatment is being done at over 10 centres across Canada five months later. I will not give the details on that because that is not his point. His point is that the simple CCSVI angioplasty technique, which is already being done for non-MS reasons in Canadian hospitals every day, is being blocked for those with MS. Why are clinical trials starting at phase 1 when the procedure has been used in Canada since 1976?

When we look at angioplasty, not every person who receives angioplasty for a non-MS reason has an extremely successful outcome. I am not suggesting that the procedure is without risk. I am not sure that we can say that any medical procedure is without risk. However, if we look at the angioplasty that has been done in Canada since 1976, it came into Canada without clinical trials and now suddenly we are talking about MS and the MS patients are concerned because they feel that the medical system is not as universal to them, nor is it as accessible to them because it is MS.

Why is it starting at phase 1?

**Senator Andreychuk:** I tried to address the honourable senator's point about why we have had angioplasty since 1976 and we are now taking this step.

The rebuttal from the medical community and Health Canada is that this is a different, invasive method, and it involves the jugular, and that is a totally different way of using angioplasty than was done before. Consequently, the fear is that it is a much more difficult and more invasive and different use of angioplasty since 1976.

My own comment would be that we look at health risks differently now than we did in the 1970s. We have profited from some of our information and past history, and that it is extremely important.

As I indicated, there is the supplemental approach of Saskatchewan and some other provinces, but they are wrestling with how to tell an MS patient and their family, if we fund it outside of Canada, about the added risks of doing it when we have not done the measurable testing in Canada. They will have to very cautiously provide full knowledge to these patients and advise them of the added risk of going out of the country. There has been feedback about the risks of going out of country to do surgical procedures. Again, patients have said, "If I had only known. I was in trauma and took whatever was available. My



government had some responsibility to tell me what I was getting into." The caution on anything new has to be balanced with people's needs.

I live in Saskatchewan. MS is not new to us. Many of my friends have it. I know how desperate they are, but I also hear from them that they are not looking for a magic cure. They understand how difficult this testing will be and how important it is for future generations.

**Senator Cordy:** I agree with the honourable senator. I do not think that in Canada we should be promoting medical tourism. I think it is unfortunate when we look at the thousands of people who are leaving Canada to get the procedure done. My hope is that with Bill S-204, Canada will move faster — not unsafely, but faster — so those with MS can actually have the procedures done in Canada.

I applaud the Government of Saskatchewan. I think they have been in the forefront in providing clinical trials. They went ahead and did it before the federal government came out and said that they were going to do it. Unfortunately for those who are getting their clinical trials done, in Saskatchewan they are being sponsored by the Saskatchewan government, but they are actually having to go outside the country to have the trials done.

The honourable senator spoke about the Scientific Expert Working Group established to study CCSVI. I have to question the term "expert" because, when the working group was established, no one who had performed CCSVI was asked to be on the working group. They said it would be a conflict and that they would be put on this working group and show a bias towards having clinical trials in Canada more quickly. However, those who had spoken out publicly against CCSVI were actually invited to be on the expert group. Has the membership of the so-called expert group changed? If, in fact, they said those who have performed it should not be on the committee and those who have spoken out against it should not be on the committee, then I would say that is fair, but it seems that those with a bias against it have been asked to be on it and those who have actually performed the procedure in Canada were not allowed to be on it. Has the makeup of this working group changed?

**Senator Andreychuk:** I can undertake to find out. The honourable senator is asking me administrative questions that I do not believe I should be answering on my own. I will endeavour to help get those answers about the working group.

(On motion of Senator Carignan, debate adjourned.)

## QUESTION OF PRIVILEGE

### SPEAKER'S RULING RESERVED

**Hon. James S. Cowan (Leader of the Opposition):** Honourable senators, I rise on this question of privilege because this is a unique and troubling situation. We are indeed in uncharted territory.

On October 18, 2011, the Minister of Agriculture introduced Bill C-18 in the other place, an Act to reorganize the Canadian Wheat Board, but the problem is that the Wheat Board Act contains a provision which requires certain steps to be taken before the government proposes fundamental changes to the act.

Section 47.1 reads as follows:

The Minister shall not cause to be introduced in Parliament a bill that would exclude any kind, type, class or grade of wheat or barley, or wheat or barley produced in any area in Canada, from the provisions of Part IV, either in whole or in part, or generally, or for any period, or that would extend the application of Part III or Part IV or both Parts III and IV to any other grain, unless

(a) the Minister has consulted with the board about the exclusion or extension; and

(b) the producers of the grain have voted in favour of the exclusion or extension, the voting process having been determined by the Minister.

• (1630)

That is section 47.1 of the Canadian Wheat Board Act. Honourable senators may find it useful to recall a history of section 47.1. In his speech at second reading here last week, Senator Plett said:

Section 47.1 of the act was added by the Liberals in 1998.

Honourable senators, that is not quite accurate, as I am sure Senator Stratton could tell his colleague, as Senator Stratton was deeply involved at that time.

Section 47.1, as originally tabled by the Liberal government as part of its major amendments to the Canadian Wheat Board Act, was a different section from the one ultimately passed in 1998. The section as originally proposed referred only to plebiscites regarding proposed extensions of the Wheat Board jurisdiction to other grains. It was here in the Senate, in our Agriculture and Forestry Committee, that the section was expanded to its current form. In fact, it was the Conservative chair of that committee, Senator Gustafson, who left the chair and moved the amendment of that clause to the current language.

According to the minutes of that meeting, there were no dissenting voices, Liberal or Conservative, raised in opposition to the motion. For example, there is no indication that Senator Stratton raised any objection.

Honourable senators, the Harper government is breaching a provision that was the result of a Conservative-proposed amendment. Now, of course, the law is the law and is binding on the government, whichever party proposed a particular provision. In view of Senator Plett's speech, which appeared to find a Liberal source of the provision and attached some significance to that, I thought I should set the record straight.



Yesterday, Justice Campbell of the Federal Court handed down his decision on two applications concerning Bill C-18. He made a finding of fact that the consultation and vote described and prescribed in section 47.1 did not take place. Justice Campbell said:

It is an undisputed fact that the Minister tendered Bill C-18 without conducting the consultation and gaining the consent expressed in s. 47.1 of the Act.

Justice Campbell then cited Chief Justice Fraser of the Alberta Court of Appeal in the case of *Reece v. Edmonton* and said this:

... courts have the right to review actions of the executive branch to determine if they are in compliance with the law and, where warranted, to declare government action unlawful.

Justice Campbell quoted at length from the judgment in *Reece v. Edmonton*, and I will read into the record the following excerpt from the judgment of Chief Justice Fraser:

The starting point is this. The greatest achievement through the centuries in the evolution of democratic governance has been constitutionalism and the rule of law. The rule of law is not the rule by laws where citizens are bound to comply with the laws but government is not. Or where one level of government chooses not to enforce laws binding another. Under the rule of law, citizens have the right to come to the courts to enforce the law as against the executive branch. And courts have the right to review actions by the executive branch to determine whether they are in compliance with the law and, where warranted, to declare government action unlawful. This right in the hands of the people is not a threat to democratic governance but its very assertion. Accordingly, the executive branch of government is not its own exclusive arbiter on whether it or its delegatee is acting within the limits of the law. The detrimental consequences of the executive branch of government defining for itself — and by itself — the scope of its lawful power have been revealed, often bloodily, in the tumult of history.

When government does not comply with the law, this is not merely non-compliance with a particular law, it is an affront to the rule of law itself.

Justice Campbell took particular care to emphasize that last line in his own judgment yesterday, so I will repeat it:

When government does not comply with the law, this is not merely non-compliance with a particular law, it is an affront to the rule of law itself.

So the question is, did the Harper government, acting through Minister Ritz, comply with the law when it introduced Bill C-18 into Parliament?

In his decision, Justice Campbell wrote the following:

The Applicants each request a Declaration that the Minister's conduct is an affront to the rule of law. For the reasons that follow, I have no hesitation in granting this request.

In describing his reasons for making this finding that the minister's actions were an affront to the rule of law, Justice Campbell explained as follows. I commend this distinction to my friends in the legal community who are sitting on the front bench of the government, including Senator Carignan, Senator Oliver, Senator Meighen, Senator Andreychuk and Senator Nolin.

Section 47.1 contains conditions which are known in law as "manner and form" procedural requirements. This form of limitation on the exercise of legislative power is well recognized in law.

As Professor Hogg explained in his text, *Constitutional Law of Canada*:

... while the federal Parliament or a provincial Legislature cannot bind itself as to the substance of future legislation, it can bind itself as to the manner and form of future legislation.

That is what Parliament did in 1998 when it passed into law current section 47.1. It bound itself as to the manner and form of future legislation. Section 47.1, honourable senators, is part of the laws of Canada. All of us, including the government and any minister of the Crown, must govern our actions in conformity with those laws.

Justice Campbell cited with approval from his judgment the following argument presented by one of the applicants:

The rule of law is a multi-faceted concept, conveying "a sense of orderliness, of subjection to known legal rules and of executive accountability to legal authority." The Courts have repeatedly described the rule of law as embodying the principle that the law "is supreme over officials of the government as well as private individuals, and thereby preclusive of the influence of arbitrary power." In other words, for political action to be legitimate, decision-making must operate within the constraints of the law. Governments cannot flout the law and must respect legitimate legal processes already in place. As the Supreme Court stated in the Secession Reference, "(i)t is the law that creates the framework within which the "sovereign will" is to be ascertained and implemented. To be accorded legitimacy, democratic institutions must rest, ultimately, on a legal foundation.

Adhering to the rule of law ensures that the public can understand the rules they are bound by, and the rights they have in participating in the law-making process. As the Applicants note, western farmers relied on the fact that the government would have to conduct a plebiscite under s. 47.1 before introducing legislation to change the marketing mandate of the CWB. Disregarding the requirements of s. 47.1 deprives farmers of the most important vehicle they have for expressing their views on the fundamental question of the single desk. Furthermore the opportunity to vote in a federal election is no answer to the loss of this particular democratic franchise.



These are the words of Justice Campbell of the Federal Court:

Until the sudden introduction of Bill C-18, Canadian farmers would have expected the requirements of s. 47.1 to be respected.

The rule of law must therefore inform the interpretation of s. 47.1, which sets out a process that includes consultation and a democratic vote prior to abolishing the single desk. An interpretation of s. 47.1 that is consistent with the rule of law would give effect to the plain meaning of its words as ordinary citizens would understand and interpret them, and not in a manner that defeats the consultative purpose of s. 47.1 — particularly, given that citizens and stakeholders understood s. 47.1 to provide them with particular rights and acted in accordance with that understanding.

• (1640)

Justice Campbell then made the following determination about the Canadian Wheat Board Act:

I find that the *Act* was intended to require the Minister to consult and gain consent where an addition or subtraction of particular grains or types of grain from the marketing regime is contemplated, and also in respect of a change to the democratic structure of the CWB.

Since, as I have already described, there was no consultation and no vote, Justice Campbell concluded that the government was in breach of this provision, that the minister “failed to comply with his statutory duty pursuant to section 47.1.”

Justice Campbell concluded his decision with the observation “that the Minister will be held accountable for his disregard for the rule of law.”

Honourable senators, these are very strong words. I cannot recall any similar judicial denunciation of a ministerial action.

In our parliamentary system of government, we expect the courts to respect the role of Parliament, but Parliament must also respect the role of the courts.

**Some Hon. Senators:** Hear, hear.

**Senator Cowan:** It is the courts that are ultimately responsible for interpreting the laws that we enact.

In raising this question of privilege, I want to acknowledge that a similar question of privilege was raised in the other place, on October 18, 2011, by my colleague and friend, the member from Malpeque, Wayne Easter. His intervention was also based on the application of section 47.1 and the failure of Parliament to ensure that the law was upheld.

On October 24, the Speaker in the other place ruled that there was no *prima facie* question of privilege. He noted that: “It is not for the Chair to interpret the meaning of section 47.1 of the Canadian Wheat Board Act.” Since that ruling was given, the

Federal Court of Canada has provided an interpretation of that section and, as I have described, it has declared that the minister violated the provisions of section 47.1.

The government, in my exchange with Senator LeBreton yesterday, says that it is disappointed with the decision and the court’s interpretation of section 47.1 and that it will appeal. It also says that, in the meantime, it will totally disregard the court’s decision and will proceed full speed ahead with Bill C-18, which Canadians now know was brought into Parliament improperly. It was brought into Parliament in violation of the rule of law.

The government, by pushing ahead with Bill C-18, is asking Parliament to join it in claiming that court decisions have absolutely no effect on the proceedings of Parliament, and that the laws Parliament passes can be ignored at will by parliamentarians and the government. The government is claiming, in fact, that all are not equal before the eyes of the law and that the rules that govern disputes between citizens do not apply to disputes between citizens and the Government of Canada.

Joseph Maingot’s *Parliamentary Privilege in Canada* states:

... the Senate and House of Commons have the power or right to punish actions, which, while not appearing to be breaches of any specific privilege, are offences against their authority or dignity.

Honourable senators, I cannot think of anything that would do more damage to the authority and dignity of the Senate in the eyes of Canadians than a claim that the Senate is above the law, that it can wilfully ignore a decision of the court and do so with absolute impunity.

How ironic it is that the self-styled law and order, tough on crime Harper government should be urging us to thumb our noses at the rule of law in this unprecedented way.

**An Hon. Senator:** Shameful!

**Some Hon. Senators:** Shame!

**Senator Cowan:** Honourable senators, based on these facts, I would urge you to find that there is indeed a *prima facie* case of breach of privilege.

**Hon. Hugh Segal:** Honourable senators, I am always careful about responding to Senator Cowan, for whom I have so much respect and affection and whose understanding of the rules is much broader and deeper than mine, for a whole bunch of reasons, not to mention our respective and different chronologies, both generally and in this world and place.

However, I do want to make a distinction, and in so doing make a submission to the chair on the notion of whether or not this is actually a matter of privilege. If one were to accept for a moment, which I do not, some of the arguments the honourable senator advanced in good faith, I would argue that he is making a point of order as to whether or not this place should be debating



a matter upon which a Federal Court judge has offered an opinion. Whether that point of order would be of merit is another matter, but there is nothing in what the Federal Court judge has done or what a minister of the Crown did some weeks ago in introducing a bill that gets in the way of our respective privilege as members of this place to debate, to vote, to dispose, which is our responsibility in the context of Parliament — not government — being supreme, number one.

Number two, I have read the judgment, as I am sure my honourable colleague has. The judgment is a judgment upon the conduct of the government. It is a clear judicial rendering, a matter which will be appealed. It is not a final judicial rendering, but it is a judicial rendering about the disposition and the action of the minister in that particular court's opinion, which we do have to respect, pending an appeal that produces some other decision.

Honourable senators, he did not render a decision about the roles and responsibilities of Parliament. He did not render a decision that would say we do not have the right to debate, to dispose, to dispatch, in our parliamentary function as the upper chamber of the Parliament of Canada. I think my honourable friend would accept the premise that even on matters of great controversy, Parliament is supreme. It is the highest court in the land. We do have a responsibility to deal with legislation put before us by the other place. We may not like it, we may vote against it, we may vote for it, we may seek to amend it, but we have an obligation to do that. I do not think any court has the right, quite frankly, to get in the way of our discharging that responsibility as parliamentarians.

Do I think the court has the right to render a thoughtful opinion on the disposition of the minister and whether what he did was or was not lawful? Absolutely. Do I think the government of the day has to respect that opinion? The fact that they will seek an appeal indicates that they do respect the role of the courts and that opinion.

Further, I would submit to His Honour, as he considers the supplication, that the risk we face in accepting that this is actually a point of privilege — and I am sure this would not be your intention — would be to have the impact of that proposition get in the way of the right of every member of this chamber to speak, debate and vote on a bill that is very contentious but that the government believes it has a legitimate mandate for, having sought that mandate from the public over three elections. I am sure that is not the honourable senator's intent, but I think if the ruling went in his favour that is where we would find ourselves. That is not in the interests of parliamentary democracy.

**An Hon. Senator:** Bravo!

**Some Hon. Senators:** Hear, hear!

**Hon. Claudette Tardif (Deputy Leader of the Opposition):** Your Honour, I rise today to support Honourable Senator Cowan's question of privilege in relation to the Senate's consideration of Bill C-18, An Act to amend the Canadian Wheat Board.

I agree with Senator Cowan's assertion that following yesterday's Federal Court ruling, this chamber cannot continue to move toward implementation of the bill in question.

Your Honour, a question of privilege is not a matter that should be taken lightly, as it should be raised only when a senator believes that our privilege as parliamentarians has been violated. For this reason — and I will go over some of the rules — a question of privilege must pass certain tests in order for the Speaker to determine whether there is or is not a *prima facie* case.

Rule 43(1) lists the conditions that must be met for the question of privilege to proceed.

• (1650)

[Translation]

According to the eligibility criteria for questions of privilege, rule 43(1)(a) of the Rules of the Senate states that a question of privilege must "be raised at the earliest opportunity."

Second, rule 43(1)(b) stipulates that the question must "be a matter directly concerning the privileges of the Senate, of any committee thereof . . . Third, rule 43(1)(c) of the Rules of the Senate stipulates that when a question of privilege is raised, it must "seek a genuine remedy, which is in the Senate's power to provide, and for which no other parliamentary process is reasonably available." Finally, rule 43(1)(d) stipulates that the question must "be raised to correct a grave and serious breach."

[English]

The court ruling was handed down yesterday afternoon, at which point we immediately began to review it. As we have found there to be, in our judgment, a question of privilege, we have raised this question of privilege at the earliest opportunity possible.

This matter directly concerns the privileges of the Senate and the privileges of the Standing Senate Committee on Agriculture and Forestry, as both bodies presently find themselves in a position where they are being asked to move forward with a piece of legislation that has been found by a court to be in breach of law.

Your Honour, I believe there to be a clear remedy in this case, a remedy that the Senate most certainly has the power to provide, that this matter be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament, and that, in the meantime, any further consideration of Bill C-18 be suspended.

A question of privilege is a grave and serious matter. Without any action by you, Your Honour, the Senate will consider and will continue moving toward the implementation of the bill in question, and will consequently be complicit in the very breach of law that the Federal Court found yesterday.

Your Honour, the Federal Court found that the Minister of Agriculture disregarded the rule of law in introducing Bill C-18 into Parliament, and as such, the bill itself is a breach of the rule of law.



There are precedents to back up this assertion. The most recent case, establishing the rule of law as a fundamental constitutional imperative comes from my own province of Alberta. My colleague, Senator Cowan, made reference to the ruling by Chief Justice Fraser in *Reece v. Edmonton*. I will state once again the comments made by Chief Justice Fraser because I believe they are vitally important:

Under the rule of law, citizens have the right to come to the courts to enforce the law as against the executive branch. And courts have the right to review actions by the executive branch to determine whether they are in compliance with the law and, where warranted, to declare government action unlawful. This right in the hands of the people is not a threat to democratic governance but its very assertion. Accordingly, the executive branch of government is not its own exclusive arbiter on whether it or its delegatee is acting within the limits of the law. The detrimental consequences of the executive branch of government defining for itself — and by itself — the scope of its lawful power have been revealed, often bloodily, in the tumult of history.

When government does not comply with the law, this is not merely non-compliance with a particular law, it is an affront to the rule of law itself.

Your Honour, these are not my words. They are the words of Chief Justice Fraser in a ruling in a somewhat similar context. The Federal Court ruling on Bill C-18 could not be clearer. The opinion rendered was firm and definitive, leaving no room for doubt.

Justice Campbell today said that he had “no hesitation” in granting the request of the applicants. He went on to state:

I find that the Minister’s decision to not comply with the conditions expressed in s. 47.1, prior to tabling Bill C-18, is judicially reviewable pursuant to section 18.1(3)(b) of the Federal Courts Act.

[Translation]

The key point of the definition of parliamentary privilege given by Beauchesne must be considered. This definition, found at citation 24 in the sixth edition, on page 11, states:

The privileges of Parliament are rights which are “absolutely necessary for the due execution of its powers”.

I would argue that few things are more necessary for the execution of the Senate’s powers than the ability to uphold and enforce the rule of law and basic democratic principles. Being a party to the process of passing a bill that has been identified as a violation of the law would make it impossible for the Senate to carry out its mandated duties.

Honourable senators, first and foremost, I think this is a question of privilege and I urge the Speaker to find favour in Senator Cowan’s interpretation.

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, my colleagues are forgetting the basic principle of the rule of law. The rule of law is not the principle of applying an ordinary law.

The principle of the rule of law arose in England to control the actions of the Crown and favour the supremacy of Parliament — because Parliament became the supreme legislative body where the will of the people against these decisions was expressed — or to limit the Crown’s ability to make decisions.

When you use the rule of law to justify the fact that a court ruling is subject to the supremacy of Parliament or when you use a court ruling to prevent a democratically elected Parliament from exercising its authority, I believe that you infringe on the rule of law.

As for the issue of privilege, as raised in the matter before the Senate, namely Bill C-18, my honourable colleague suggested that the bill contravenes section 47.1 of the Canadian Wheat Board Act and, for that reason alone, the honourable senators cannot study it, and that the minister, by introducing the bill, acted in violation of the said section and breached the privileges of the Senate.

In response to those arguments, I would like to clarify that, with the exception of constitutional laws, no law can nullify Parliament’s ability to examine legislative measures. Allow me to draw your attention to the work of Peter Hogg, entitled *Constitutional Law of Canada*, 5th. Edition, Volume 1. On page 352, we find the following:

In their respective jurisdictions, not only can Parliament and the legislative assemblies pass laws of their choosing, but they can also repeal any previous law. Even if Parliament or a legislative assembly stipulated that a law could not be repealed or amended in future, such a provision would not in any way prevent its successors from repealing or amending the protected law.

I will quote another passage from Hogg:

• (1700)

[English]

In political terms, the rationale of this rule is clear. If a legislative body could bind itself not to do something in the future, then a government could use its parliamentary majority to protect its policies from alteration or repeal. This would lay that hand on a government subsequently elected to power in a new election with new issues.

In other words, a government in office could frustrate in advance the policies urged by the opposition.

[Translation]

Implying that section 47(1) prevents us from discussing the bill before us would be to consider it constitutional in nature, and that is simply not an admissible argument.



Implying that a legislative device limits the power of a minister to introduce a bill is also not an admissible argument. The decision rendered yesterday clearly pertains only to the minister's actions and not to the right of Parliament to study Bill C-18. Justice Campbell clearly indicated that such was the case on page 5 of his decision. I repeat that this is a request for a declaration of right, not a claim for an injunction. Why was a claim for an injunction not made? It was not made because the judiciary does not have the authority to intervene in legislative jurisdiction.

I quote Judge Campbell:

[English]

The present Applications are simple in nature; they are directed at an examination of the Minister's conduct with respect to the requirement of s. 47.1. The Applicants confirm that the validity of Bill C-18 and the validity and effects of any legislation which might become law as a result of Bill C-18 are not in issue in the present Applications.

The Applicants make it clear that their Applications are no threat to the Sovereignty of Parliament to pass legislation.

[Translation]

However, honourable senators, the arguments regarding the meaning and authority of section 47(1) of the Canadian Wheat Board Act are not at all relevant in determining whether we are right in examining Bill C-18.

With respect, honourable senators, it is not the Honourable Speaker's duty to rule on questions of law. In addition, the criteria for raising a question of privilege set out in section 43(1) of the Rules of the Senate have clearly not been met and this oversight forms the basis of my argument and is the reason why this question, which is nothing more than a complaint, must be disallowed.

Questions of law are clearly extremely interesting. I must admit that I have to keep myself from responding to all the arguments of law that have been raised, and from citing the Supreme Court, among others, particularly on the notion of manner and form. In 1991, citing the Supreme Court of Southern Australia and Chief Justice King, the Supreme Court of Canada clearly established that, when a legislative body decides to delegate, through a referendum, to a body other than the legislative body, as opposed to holding a referendum — which is exactly the case here — it is not legislating on the manner and form, but on the substance, which is an abdication of power. This goes against the sovereignty of Parliament and is unconstitutional.

It is simply not within the Speaker's purview to deal with matters of law or matters of constitutional validity. Only senators can make those decisions in the course of their deliberations on the bill. Whether the legal matter is raised by legislation or a ruling that interprets or applies it, the fact remains that we are before a matter of law.

[ Senator Carignan ]

Honourable senators, allow me to draw your attention to the following references, with which the Hon. the Speaker is familiar, I am sure:

On page 180, Bourinot states:

The Speaker will not give a decision upon a constitutional question nor decide a question of law.

The 6th edition of Beauchesne makes the same comment in paragraph 168(5).

O'Brien and Bosc states on page 636:

Though raised on a point of order, hypothetical queries on procedure cannot be addressed to the Speaker nor may constitutional questions or questions of law.

Speaker Molgat also explained, in his ruling of November 20, 1997, which we find on pages 194 and 195 of the *Debates of the Senate*:

I wish to remind honourable senators, however, that it is not my responsibility to rule on matters of law or the Constitution. That is totally outside my field of jurisdiction.

Honourable senators, on October 18, 2011, the Liberal member of Parliament for Malpeque rose on a point of order in the other place on this same issue, on this same bill, raising a question of privilege. In his ruling on October 24, 2011 — I will read some passages; the issue raised is identical to the one raised by Senator Cowan — the Speaker summed up the issue:

In raising his question of privilege, the member for Malpeque stated that the government had violated a provision of an existing statute by having introduced Bill C-18 without having previously allowed grain producers to vote on any changes to the structure and mandate of the Canadian Wheat Board.

He did not need a federal court ruling to raise this legal question. That was the question that had to be raised and that was known to our colleagues on the other side, because they knew that this legal question had been raised in the House of Commons, and I am sure you remember Senator Robichaud, who quoted Séraphin, "The law is the law," and who quoted section 47.1 to demonstrate that the minister acted illegally. They were already aware that this point was going to be raised. I will get back to the rules regarding questions of privilege, which must be raised as soon as possible.

To continue, the member said:

... my privileges have been violated due to the expectation that I will be required to engage in and cast a vote upon legislation that begins from the premise of a deliberate and overt violation of statutes passed by the House with the expectation that those provisions would be respected most of all by members of the House.

Those were the exact words used by Senator Cowan in his question of privilege.



I will continue:

The member for Malpeque explained that he was not asking the Speaker to rule on the legality of section 47.1 of the Canadian Wheat Board Act, but rather whether his privileges were violated as a result of the government introducing legislation he claimed contravened an existing statute passed by Parliament.

Later on in his decision, the Speaker of the other chamber said:

... it is important to delineate clearly between interpreting legal provisions of statutes — which is not within the purview of the Chair — and ensuring the soundness of the procedures and practices of the House when considering legislation — which, of course, is the role of the Chair.

• (1710)

At the very end, he stated:

Having carefully reviewed the submissions on this matter, I must conclude that, while the member for Malpeque may feel aggrieved by the government's approach and by its introduction of Bill C-18, there has been no evidence offered that the government's actions in this case have in any way undermined the ability of the member to fulfill his parliamentary functions.

The question we must ask ourselves is how the minister's behaviour, which some people claim is unlawful, is hindering or preventing the Senate from reaching a decision, through the legislative process, on an amendment to the Canadian Wheat Board Act by Bill C-18.

The Speaker can rule only on procedural matters. The honourable senator did not and cannot refer to any rule or practice of the Senate that was violated by the introduction of Bill C-18. Justice Campbell's decision also did not make any such reference, nor could it, since that would not be within his jurisdiction. Had he done so, he would have been violating the principle of the rule of law.

How is a bill that duly passed the other place and was received here on November 29 hindering or preventing the work of the Senate or that of honourable senators?

I would now like to address rule 43(1) of the *Rules of the Senate*. In order for a question of privilege to be received, it must first meet the criteria of rule 43(1)(a), which stipulates that it must "be raised at the earliest opportunity."

As I said, Bill C-18 has been before the Senate since November 29. Thus, more than a week has passed since it was introduced here.

At second reading, on December 1, at 4:10 p.m., Senator Robichaud said, "The law is the law." He invoked rule 47.1 or tried to claim that the rule had been violated. However, no question of privilege was raised. We therefore proceeded to second reading, after which the bill was referred to committee. Later on, with the consent of both deputy leaders, we established

when it would be examined in committee and determined that it would come back to the Senate on December 14. Thus, there was implied consent to the effect that this bill would be studied in committee, with the unanimous consent of the Senate.

Yesterday's ruling does not change the situation or the legal issue. The ruling is only declaratory. The situation that existed on November 29 is exactly the same one that existed yesterday on December 7.

Honourable senators, under rule 43(1)(c), in order for a question of privilege to be admissible it must:

(c) be raised to seek a genuine remedy, which is in the Senate's power to provide, and for which no other parliamentary process is reasonably available;

You will understand that in the absence of any other reasonable parliamentary process, this is a big step. We are working within the framework of the legislative process. The bill is being studied in committee; amendments can be made to it. Amendments can also be made to the bill at third reading stage. The Senate can therefore study the bill and decide where to go from there.

Honourable senators, as I have respectfully indicated, it is not in the purview of His Honour the Speaker to rule on matters of the Constitution or matters of law. In any event, under our rules, the privileges of neither the senators nor the Senate have been breached. This matter was raised after the prescribed time limit, the earliest opportunity.

I will reserve my legal arguments for third reading stage.

[English]

**Hon. Anne C. Cools:** Honourable senators, I have been listening to this debate with considerable interest. I made it my duty today, when I got the notice, to pull up the judgment of the Honourable Justice Campbell.

I listened with care to Senator Cowan, Senator Tardif and Senator Carignan, and I can find no privilege that has been breached. I have listened with care especially to Senator Cowan on this initiative. He has some valid concerns, but he has not stated any privilege that has been breached. Neither has he mentioned any person who has breached a privilege.

The privilege notice that I received earlier today is in print, but I do not think it has yet been read into the record. It is dated December 8, 2011, and signed "James Cowan." Senator Cowan is a man to be respected.

He wrote:

Pursuant to Rule 43 of the *Rules of the Senate of Canada*, I give notice that later today I intend to raise a question of privilege regarding the consideration of Bill C-18 by the Senate in light of yesterday's ruling by the Honourable Mr. Justice Campbell of the Federal Court concerning the introduction of the said bill in Parliament.

I think he meant in the House of Commons.



Honourable senators, Senator Cowan has spoken but he has not told us what the privilege is that has been breached in respect of the consideration of Bill C-18. He cited many statements from Mr. Justice Douglas Campbell's ruling, but he did not ask us to deliberate on a privilege that has been breached.

I thought it might be helpful to begin at the beginning, I shall read his court order.

THIS COURT ORDERS that:

... pursuant to s. 18.1 (3) (b) of the *Federal Courts Act* ... with respect to the Minister causing to be introduced in Parliament Bill C-18, I make the following Declaration:

He continues:

The Minister failed to comply with his statutory duty pursuant to section 47.1 of the *Canadian Wheat Board* ... to consult with the Board and to hold a Producer vote, prior to the causing to be introduced in Parliament Bill C-18, *An Act to Reorganize the Canadian Wheat Board and to make consequential related amendments to certain Acts*.

This is most interesting because Mr. Justice Douglas Campbell has been more circumspect and attentive to the privileges of Parliament, and of the Senate in particular, than we have noticed.

The application in question was made pursuant to section 18.1(3)(b) of the *Federal Courts Act*. I will put that on the record for those who might be interested.

• (1720)

I remind honourable senators that in the parlance and privileges of Parliament, the Federal Court of Canada is an inferior court. We should be cautious about what we do and say or we may find ourselves in the position of submitting Mr. Justice Douglas Campbell's judgment to the judgment of this house. If we wanted to do that, we are free to do so, but I do not think the intention of Senator Cowan's intervention is to ask His Honour to act as a judge over Mr. Justice Douglas Campbell. Let honourable senators understand, I do not believe for a moment that Senator Cowan is asking this house to act as an appeal on that judgment, and I do not think that Mr. Justice Douglas Campbell intended such an appeal; he was very circumspect.

Honourable senators, let us go to section 18 of the *Federal Courts Act*, remembering that the Federal Court used to be the Court of the Exchequer. Section 18.1(3) states:

On an application for judicial review, the Federal Court may

(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

Honourable senators, the Senate of Canada is not a federal board, commission or other tribunal. A minister of the crown is not a federal board, commission or other tribunal. We must understand that this is the highest court in the land.

I had not planned to read section 18.1(3)(a) but perhaps I should read it so the record can show the whole section in respect of an application for judicial review. Section 18.1(3) states:

On an application for judicial review, the Federal Court may

(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or

**The Hon. the Speaker:** Order.

**Senator Cools:** Honourable senators, clearly, the Senate of Canada and its deliberations do not fall within the ambit of section 18.1(3) of the *Federal Courts Act*.

Mr. Justice Campbell was attentive to and understood that, because he is a judge. In his Reasons for Orders, as printed on page 3, at paragraph 4, he states:

The Applicants each request a Declaration that the Minister's conduct is an affront to the rule of law. For the reasons that follow, I have no hesitation in granting this request.

The justice is isolating, or separating the minister from the House of Commons or from the Senate. He is making clear distinctions and isolating, or segregating, the minister's actions from either house.

On page 5, at paragraph 8, he states:

The present Applications are simple in nature; they are directed at an examination of the Minister's conduct with respect to the requirements of s. 47.1. The Applicants confirm that the validity of Bill C-18, and the validity and effects of any legislation which might become law as a result of Bill C-18 are not in issue in the present Applications.

Mr. Justice Campbell is distancing himself from passing any judgment on the deliberations of either the House of Commons or the Senate; that is crystal clear. It would be in poor taste for His Honour, the Senate Speaker, to pass judgment on Mr. Justice Douglas Campbell's judgment unless it was so offensive to the Senate that it breached the privileges of the Senate. At that point, we would have to defend ourselves as a Senate and do something; but those conditions are not before honourable senators. Mr. Justice Campbell has said nothing that is out of order about the Senate. We should grant him that credit and understand that when judges read their names in parliamentary proceedings, it makes them a little nervous.

I have been trying to understand what Senator Cowan means. What is the question of privilege? What is the breach that has occurred? Senator Cowan has not identified the question of



privilege or any privileges that have been breached. I do not believe that he is asking the Speaker of the Senate to act as an appeal court over the judge. I must conclude, based on what I listened to, that there is no breach of privilege. Perhaps there is something disordered, or perhaps there is a point of order. However, I then go to the other conclusion, having heard the references to Professor Hogg and others, and I wonder: Just what is the nature of his complaint? Is the complaint that perhaps Bill C-18 should have first repealed section 47.1? I do not think that is his complaint. Would the same questions be before us if Bill C-18 had a clause that repealed section 47.1 of the Canadian Wheat Board Act? I do not think Senator Cowan is saying that either. Was it an oversight? Should section 47.1 been repealed before other amendments to the act? I do not think that is the problem, either. Certainly, the minister would have had the option to include in the bill a repeal of the section before he presented it to the house; but that did not happen. All of this needs serious study and contemplation.

Honourable senators, these issues are larger and more complicated than we often see and understand. Perhaps there would be no court judgment if there were a section to repeal 47.1 in the bill; but I do not propose that someone move an amendment to do so. Rather, I am saying: Let honourable senators understand what they are looking at.

Senator Day just said something profound. He said that the minister did not follow a process. In that case, you would have to argue that the minister breached the privileges of the Senate. The bill did not do that because things do not breach privileges; people breach privileges. The argument would have to proceed on a substantive basis. I am deliberately avoiding the content and substance of Bill C-18 because it is reasonable and just that those who are touched by the changes to the Wheat Board will be concerned. That is reasonable and just. I am trying to stay away from the substance and stay on privilege only; I can see no privilege. I hoped that perhaps Senator Cowan might identify a particular privilege, perhaps the privilege of representation and whether representations were made. However, I can see none and I can find none. What I would say is that I do hope we will find some sort of resolution.

• (1730)

Honourable senators, as far as I am concerned, Mr. Justice Campbell was assiduous to pass no judgment on what either house was doing, or on any consideration of the houses, on the question of the validity of Bill C-18. If he did not make that judgment, I do not think that we can bring forth a question of privilege here based on his judgment. That would appear that he was suggesting that somehow there was some impropriety here, when in fact the judge deliberately and assiduously avoided going down that road.

Honourable senators, I know of this judge, and I believe Senator Andreychuk served with him at a previous time. The judge is an honourable man and we should treat him thus. His judgment, his concern, was about a minister, not about the houses' right to deliberate or to consider Bill C-18. The matter that Senator Cowan has put before us is not a question of

privilege, but is one of deep substantive importance. However, that debate should take place on the rubric of the bill, not on privilege.

Perhaps we could bring the minister before us, but it should not be under the rubric of privilege because there has been no breach of privilege here.

**Hon. Joan Fraser:** Honourable senators, we are engaged here in a very serious discussion based in significant measure on two understandings of the rights, role and appropriate conduct of Parliament. I am tempted to say one extreme was stated yesterday by the Leader of the Government when on this subject, in Question Period, she said:

The government believes we are within our rights to bring in any piece of legislation. Once it is passed by Parliament, it will be brought into law.

I would suggest that my alternative view is the one I enunciated in debate on this matter last week, in response to some comments by Senator Plett about parliamentary supremacy. It remains my view that Parliament unquestionably has the right to make laws and has the right to change laws, but does not have the right to break the law.

**Senator Tardif:** Hear, hear.

**Senator Fraser:** The particular element of law in question, in section 47.1 of the Canadian Wheat Board Act, is a rule to which Parliament, in full knowledge of what it was doing, bound itself in 1998. I am sure His Honour is familiar with the chapter on self-imposed restraints on legislative power in the majestic work by Professor Hogg, *Constitutional Law of Canada*. In that section, there is a very interesting and quite lengthy section on the manner and form of future laws.

Professor Hogg says:

... a legislative body may be bound by self-imposed procedural restraints on its enactments.

In other words, a parliament cannot bind a future parliament as to the substance of the legislation that it brings in, but it can bind future parliaments as to the way in which they make those changes.

Professor Hogg gave a couple of hypothetical examples, one of which strikes me as particularly apt here. He says:

For example, the federal Parliament could provide that a law to abolish the office of Auditor General must first be approved by a referendum of voters. . . .

Then he cites possible provincial examples and he goes on to say:

A law which purported to disregard these hypothetical examples of manner and form laws, for example, by purporting to abolish the office of Auditor General without a prior referendum . . . would be held to be invalid by the courts.



We have been reminded by Senator Carignan that, as Beauchesne teaches us, in citation 31(9) in the sixth edition:

The failure of the Government to comply with the law is not a matter for the Speaker, but should be decided by the courts.

There is no dispute about that. The difficulty is that it has now been decided by the courts, and that is the difference between this question of privilege and the one that was raised in the other place. The matter has now been decided by the courts and Mr. Justice Campbell has said that the conduct of the minister, in introducing this legislation, was a breach of his statutory duty and an affront to the rule of law.

This puts the matter squarely back in our hands. Mr. Justice Campbell, as Senator Cools has rightly noted, was very careful not to intrude upon the prerogatives and the role of Parliament, but it does bring us to the point where we now have to consider our next action.

If one reads Mr. Justice Campbell's judgment carefully, it is clear that he believed it was now up to Parliament to respond. We are engaged, if you will, in what Chief Justice McLachlin calls a "dialogue" between Parliament and the courts and it is in Parliament right now.

Mr. Justice Campbell did say, as Senator Cowan has noted, that his decision, his declaration, would have as its second and most important effect that the minister will be held accountable for his disregard for the rule of law. He did believe that there would be effects to his declaration. In my view, he also believed that there was some urgency in this matter because he said:

Pursuant to s. 20 (2) (b) of the *Official Languages Act* . . . I am of the opinion that to make the present Order available simultaneously in both official languages would occasion a delay prejudicial to the public interest.

The only matter that is urgently afoot in the case of Bill C-18 is its consideration by the Senate. Other than that, it is winter and the wheat is not being sold next week. What is possibly a matter that would be prejudicial to the public interest if we were to delay responding to his declaration, his judgment, is the matter of consideration of Bill C-18 by the Senate.

Honourable senators, I would submit that in sending the matter back to us, which is what he has essentially done, Justice Campbell has indeed confronted us with a very serious question of privilege. If I go to the famous definition of Erskine May, let me quote a few of the core words. Privileges are "enjoyed by each House . . . for the protection of its Members and the vindication of its own authority and dignity."

I cannot conceive of how proceeding with this bill in the present circumstances would do anything but have a lasting damaging effect on the authority and dignity of Parliament in general and of the Senate in particular.

[ Senator Fraser ]

I repeat: When Parliament adopted section 47.1 of the Wheat Board Act, it knew what it was doing. Senator Cowan has reminded us that Senator Gustafson, whom so many of us knew and loved, was the initiator of the precise form of this protection, but it was not just a matter of an individual senator.

• (1740)

Let me give you some declarations from the then-Minister of Agriculture. He told the House of Commons Agriculture Committee that, in his view, dual marketing was not a viable alternative to the single desk, but he stated that, if producers voted for such a change, it could be implemented.

He said, and I quote, "the amendments that were then being brought into the Wheat Board Act," and this is in 1998, "would ensure that no minister responsible for the board could attempt to change its mandate, either to enlarge it or reduce it, without first having conducted a democratic vote among the relevant producers and having consulted with the board's new board of directors."

He told the Senate committee:

The amendment would require that if any future minister responsible for the board decides that it is appropriate public policy to change the mandate of the board, to make it either bigger or smaller, it would be up to him —

— to the minister —

— to make that policy determination. But he would be required to conduct a vote in advance to obtain the consent of farmers.

Finally, a last quote from the minister's statements to the Senate committee:

The principle here, senator, is not that someone should not at some future date change the mandate of the board, but if you are going to do it, then, as a first principle, you should ask farmers through a vote whether that is what they want. That is the fundamental principle.

He continued:

The fundamental point is that farmers have the whip hand and they, not a bureaucrat, not an administrator, not the Wheat Board, not the politicians, will decide whether the mandate of the Canadian Wheat Board should change.

We knew what we were doing when we passed that section of the act binding ourselves not for future substantive change but in terms of the way in which that change could be achieved. We did that solemnly. We wrote it into the law. It was not just a casual statement by someone. We put it in the law.

If we now say, "Oh, well, yes, but that was then, and it does not really matter," we are saying, in effect, that in a solemn session of the Senate, passing laws, we lied. What more blatant way can you imagine, honourable senators, to erode the authority and dignity of the Senate and, indeed of the whole of Parliament?



I would remind colleagues that Parliament includes the Governor General. If this bill proceeds and is passed, the next step is to ask the Governor General to give Royal Assent to a bill that a court has ruled was illegally presented. That is no way to treat the Queen's representative and, incidentally, no way to treat someone who, in his private life, has been an illustrious jurist and officer of the court.

How can we possibly do our jobs properly if we do not believe that we are bound by the laws that we pass? Why should Canadians obey the laws we pass if we do not obey them ourselves?

The government says it will appeal this decision. Fine. Maybe it will even win on appeal, but maybe it will not, and then where will we be, honourable senators? Where will we be as senators who knowingly proceeded with, on current form, what is likely to be the passage of a bill that we knew was illegally before us?

If the government wins on appeal, then we can proceed with this bill and there is no problem. If it does not win on appeal, it is not just where will we be, but also where will the poor farmers be. If it does not win on this bill, we will have laid claim for every citizen of Canada to see and future generations to ponder the fact that this chamber will have decided that it is all right to play fast and loose with the law.

I know Senator Cools does not think so, but I do.

To proceed with this bill under the present circumstances is, in the most profound sense, a contempt of Parliament. It is also, in my view, the kind of contempt of Parliament that is a breach of privilege, because it impedes our ability to exercise the moral and, indeed, the legal authority with which Parliament is vested and which it is responsible for observing and respecting.

Senator Segal suggested that we would have been better to proceed as a point of order. If Your Honour wished to consider this matter a point of order, I would bring the same arguments, but in my belief it is a profound breach of privilege and a betrayal of everything that Parliament represents.

**Senator Cools:** Honourable senators, I have the strong sense that we had better make this record abundantly clear that we are in no way attempting to impugn Mr. Justice Douglas Campbell. I have made this point, but to the extent that he has become involved in this debate, and to the extent that this proceeding originates in his ruling, is the extent to which we should be more careful. I do not think it is healthy, and I do not think it is good. I think it would have been better to have avoided it, quite frankly. I really do think so.

The points that Senator Fraser has raised are substantive points. I have not taken a position on this bill, so I am not defending the government's position on it, but I am saying that if we have complaints about the minister, then address those complaints to the minister directly. Every one of us, every member of either house, is free to move a motion of censure any day at any time, but let us not involve this judge in this matter. That is all I am trying to say.

I know that many of our judges get very nervous when their names and rulings are invoked in controverted hearings and disagreement. In a funny kind of way, I am beginning to be even sorry that I intervened.

In the interest that there be no confusion whatsoever, I would like to put on the record the relevant section of the Parliament of Canada Act, which addresses the fact that every judge in his judicial work should take judicial notice of the privileges of Parliament. In my view, he did. Mr. Justice Campbell did.

I would like to put that on the record. In an Act Respecting the Parliament of Canada, and we call it the Parliament of Canada Act, sections 4 and 5 are the sections about the privileges, immunities and powers of Parliament. Section 5 says:

The privileges, immunities and powers held, enjoyed and exercised in accordance with section 4 are part of the general and public law of Canada and it is not necessary to plead them but they shall, in all courts in Canada, and by and before all judges, be taken notice of judicially.

For honourable senators who are new to this place, this may be the first time they are hearing this, but all judges in every court, the inferior courts and the superior courts of this land, are commanded to take judicial notice of the privileges, immunities and powers of the Senate. I am satisfied that the Honourable Justice Campbell did.

The other statement I would like to make comes from the source of all of this law, which is the 1689 Bill of Rights, Article 9. I will put this on the record. This is the source of all privileges that were received into Canada from the United Kingdom by section 18 of the British North America Act. I will cite this for honourable senators. Article 9 of the Bill of Rights says:

That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament.

• (1750)

Obviously, Mr. Justice Campbell is fully aware of Article 9 of the Bill of Rights. I never met a judge who was not aware of it. I make this clear. He was very observant of that fact.

The final thing I wish to quote is a statement from Erskine May. This is *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, twenty-first edition. I would like to read from page 154:

Most of the modern instances of interaction between the courts and Parliament have their origin in the determination of the proper limits of proceedings in Parliament, some of them with a particular concern for what is internal to Parliament. The courts have recognised the need for an exclusive Parliamentary jurisdiction, as a necessary bulwark of the dignity and efficiency of either House. The judges have further admitted that when a matter is a proceeding of the House, beginning and terminating within its own walls, it is obviously outside the jurisdiction of the courts . . .



These are famous statements that have been made and repeated for some centuries. I wanted to make sure, honourable senators, that we observe all of these.

I just feel a little bit queasy that the honourable judge may feel a little bit offended. In any event, we have to differentiate between that which is substantive and that which is not. It is crystal clear that Senator Fraser disagrees with the substance of the bill. That is fine. I have no quarrel with that, but that is a substantive matter. It should not be taking place under this rubric of privilege because it is not a question of privilege as no one has pointed to the privilege which has been breached.

They have all said this is a bad thing, something not nice has happened, and I agree with that. However, it is not a question of the privilege. Once again, I say I believe it is very unfortunate that we have, I would not say littered, but spread the judge's name throughout these proceedings. I would like to say, because I know he will read this, please take no offense; I am sure that no one meant any offense. At no time was anyone intending to constitute this place as an appeal on that judgment.

Thank you, honourable senators.

**The Hon. the Speaker:** Honourable senators, just before I call on the Honourable Senator Moore, and I will want to return to Senator Cowan as well, I just want to draw the attention of honourable senators to the clock and to seek your advice.

If at six o'clock there is no agreement, we return at eight o'clock. I will want to hear all honourable senators until I am satisfied that I have heard enough, which is what the rules provide for. If we do not see the clock, I think we will have heard all the senators that we would be needing to hear by six o'clock, and I would ask the agreement of the house that I be given a period of time to check the references, in particular the literature. I think I can do so within an hour, and I would come back with a ruling this evening.

It being the evening, we know there are travel plans and the like, so I am totally in the hands of the house. This is important, and I want to make sure that I do this right. What would be your advice as to six o'clock?

[Translation]

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, I suggest that we not see the clock.

**The Hon. the Speaker:** Is it agreed, honourable senators, that we not see the clock?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** May I have some time to review?

**Senator Carignan:** Clearly, take the time you need to make your decision.

[ Senator Cools ]

[English]

**Hon. Wilfred P. Moore:** Honourable senators, I think that in his remarks, Senator Cowan was trying to impress upon the chamber the question of privilege that has been breached, being the privilege of the house being complicit in proceeding with the consideration of a bill that has not been met in law. Aside from the decision of the court yesterday, that still faces us as well. I think he is on point.

Senator Carignan mentioned the rule of law and the evolution of it and so on in controlling the king. As our nation and the Constitution have evolved, from our point of view, it is controlling the executive. That is one of the main jobs of this chamber, honourable senators, one of the very roles for which we were created by the Fathers of Confederation.

On November 24, Senator Brown said, "if a party gets a majority government, they are able to change laws and make amendments to laws." He went on to say: "I am saying that a majority government has a right to change that act or any other act that they want to."

Well, that is right. That is absolutely correct. However, of course, that is founded on the expectation by him and the government that those who live in this country would follow those new laws. It does not say that one does not have to follow the laws that are on the books today. That is the key point here. We have a law that, whether people like it or not, is there. For a Minister of the Crown not to uphold it is unconscionable. Members of the cabinet are the proverbial role models for the country. They are not above the law, and they are expected to keep the law. For us to be asked to be complicit in an exercise and a process where that main link in the chain is not there, I do not think is right.

I think Senator Plett and Senator Segal said we had three election campaigns. That is true, but I do not remember hearing anyone say, "We are going to get rid of the Canadian Wheat Board, and to do that, we are going to break the law." I never heard that. I never heard anyone tell the farmers — this is bigger than farmers, by the way, honourable senators. This goes right to the heart of our democracy. This speaks to all Canadians. I never heard anyone say, "We will achieve our goal by ignoring or breaking the law of Canada." People would have been in the streets. How can we go about it in this surreptitious way and think we are doing justice to the country and to the Canadian public? I think it is wrong.

• (1800)

The matter of democracy is a fragile thing and it is fundamentally based on the rule of law. That is what we expect our governors, our citizens, and all branches of government to do. That is at the core of our civil society. Without that, what are we reduced to? A proverbial banana republic? That is not who we are. That is not how the people of the world look to Canada.

Senator Cowan's remarks, in terms of trying to impress upon us in the chamber that this is indeed a question of privilege, I think he is correct.



Your Honour, you have an exemplary career in human rights. All of those rights, and the exercise and observance of them, are founded on the rule of law. This is not a part-time thing. The rule of law is not a matter of convenience, depending on who is in power. It is not an intermittent thing; it is a full-time thing and it is to be observed by everyone. I would suggest to Your Honour that the question of privilege as raised by Senator Cowan is correct, and I would ask you to find so.

**Senator Cowan:** I will briefly address one point.

In his remarks, Senator Carignan quoted at length from Professor Hogg's book, *Constitutional Law of Canada*. However, he did not quote the next paragraph, which says:

Thus, while the federal parliament or a provincial legislature cannot bind itself as to the substance of future legislation, it can bind itself as to the manner and form of future legislation.

Justice Campbell referred specifically to that concept of manner and form. I dealt with that in my speech and I will not repeat that.

On page 6 of his judgment he stated:

The Minister has attempted to argue that s. 47.1 does not meet the requirements of a "manner and form" provision. I dismiss this argument . . .

The judge has found that this is a manner and form provision. When Senator LeBreton answered my questions yesterday, she talked about the supremacy of Parliament and the right of Parliament to pass and amend laws. No one is questioning that.

We now have a judicial determination that this specific provision in section 47.1 is a "manner and form" procedural requirement, not some little detail or irrelevant point. This says that if you want to change the law before you introduce a bill, you have to go through these steps. You have to consult and you have to have a plebiscite. The judge has found there was no consultation and there was no plebiscite. He has also found that this matter is improperly before Parliament.

This goes to the question that Senator Segal raised and that Senator Cools wandered on and on about: What is the privilege? We are being asked to consider a bill that a judge has found is improperly before Parliament.

The Leader of the Government in the Senate has said they are disappointed with that decision. I have lost cases and I have been disappointed too. If I am sufficiently disappointed and I think I am right in my disappointment, I appeal; I do not ignore.

What the government should do is stop, do the consultation, and have the plebiscite, which they are obligated to have. The leader dismisses the plebiscite that the Wheat Board was forced to carry out because the government did not do what it was supposed to do. Let them carry out their own plebiscite, as they are obligated to do under section 47.1 of the act.

If they achieve the result they would like to achieve in that plebiscite, then they come back to Parliament and say, "Here is the bill. We want to remove section 47.1," or they can say, "We have consulted and we were right; the farmers, or the producers, have supported us." Then they have met the "manner and form" procedural requirements set forth in existing section 47.1.

However, if they do not want to — and it is pretty apparent by now that they do not want to consult, and I suggest they are afraid of what might happen if they had a plebiscite — it is perfectly in order for them to come with a bill to amend the Canadian Wheat Board Act to delete that section. They did not do that. Therefore, we are now being asked, as Senator Moore just said, to be complicit and to vote on a bill that is not properly before us.

Senator Cools went on and on about how we are dragging Justice Campbell into this and we are asking you to act as some kind of an appeal court to the Justice. Nothing of the kind was suggested by anyone.

We have his decision. The minister and the government are perfectly entitled to appeal that decision. They can appeal it to the Federal Court of Appeal; and if they do not like that decision, they can go to the Supreme Court of Canada. Then we will know. If the Supreme Court of Canada ultimately agrees with the government's position, then we know; and then, as Senator Fraser said, we can simply proceed. We already have it in committee, and we simply proceed with that.

That is much easier. There may be some delay in that, a matter of months, which would be unfortunate for those who want to get out from under this single-desk regime. However, just think of the consequences. If, contrary to what the government hopes, the Supreme Court of Canada does not agree with the government, and the Supreme Court of Canada says that Justice Campbell was correct, what then? What will have happened if a period of months has gone by and in the meantime this bill has been passed, has received Royal Assent, producers are marketing outside of the purview of the Canada Wheat Board, and the Canada Wheat Board begins to reorganize its operations?

Honourable senators will remember that one of the provisions in this bill is that the existing directors, those directors who are elected by the producers, will be replaced by government appointees, and those government appointees will have a clear direction from this government to shut down that operation. What happens then?

What happens if, six months from now, we find that the Supreme Court of Canada agrees with Justice Campbell? Then we will say: How do we unscramble that omelette? I do not know.

What is the balance of convenience here? There will be a delay of some reasonable time and there is no question that the government can ask the Federal Court of Appeal and, subsequently, the Supreme Court of Canada to expedite a hearing of these appeals.



For those who are anxious, like Senator Plett, to get out from under this and to put an end to the single-desk monopoly of the Canada Wheat Board, there will be some inconvenience and some delay for those folks. However, I suggest it will be nothing compared to the chaos that would come about if we found that this bill went through, the government fired the existing directors and appointed new directors, and those directors began to do the government's bidding with respect to the unwinding of this regime, which has been in place for many years.

Then, how would we put that back together again, if the Supreme Court of Canada says Justice Campbell was correct? I suggest that, on balance, the wiser course is to simply hold on until we have a final judicial determination as to whether the government's view of its action is correct or Justice Campbell is correct.

**The Hon. the Speaker:** Honourable senators, I wish to thank all honourable senators for their participation in this debate. I will take it under advisement. As agreed, I will ask the Speaker *pro tempore* to take the chair to continue the scroll for the day. When that is finished, before the motion for adjournment, I will return by seven o'clock, with the bells ringing at quarter to seven should the Senate not be sitting. It is agreed that there be a suspension from the time that we complete the scroll and prior to the adjournment motion. That is agreed.

• (1810)

[Translation]

## HUMAN RIGHTS

### COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Patrick Brazeau,** for Senator Jaffer, pursuant to notice of November 30, 2011, moved:

That the Standing Senate Committee on Human Rights have the power to sit at 4 p.m. until 8 p.m. on Monday, December 12, 2011, even though the Senate may then be sitting, and that Rule 95(4) be suspended in relation thereto.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

(Motion agreed to.)

[English]

## BUSINESS OF THE SENATE

**The Hon. the Speaker *pro tempore*:** Honourable senators, we have reached the adjournment section so we will suspend, as set forth by His Honour the Speaker.

The bells will begin ringing at 6:45, 15 minutes prior to the resumption of the sitting.

[ Senator Cowan ]

Do I have permission to leave the chair?

**Hon. Senators:** Agreed.

(The sitting of the Senate was suspended.)

• (1900)

(The sitting of the Senate was resumed.)

## QUESTION OF PRIVILEGE

### SPEAKER'S RULING

**The Hon. the Speaker:** Honourable senators, reference to the question of privilege has been raised again.

[Translation]

I would like to thank all the honourable senators who participated in the discussion on this question of privilege. This is a very important question because it deals with the rights and powers of Parliament and more specifically, the Senate, with regard to the review of legislation as an independent element in our democratic system of government.

[English]

The concerns raised by the Leader of the Opposition deal with the rule of law, a foundational principle in our society, to which both government and individuals are subject. I have had the opportunity to reflect upon the arguments and review the issue, together with the procedural literature. I am now prepared to rule.

As I understand it, the basic argument to sustain the question of privilege is that the Senate is now examining a bill, C-18, that was presented to Parliament in violation of the requirements of the existing *Canadian Wheat Board Act*. This argument would lead to the conclusion that the Senate's study of Bill C-18 should be limited or constrained in some way. Particular importance is attached to a decision given yesterday by the Federal Court relating to requirements imposed under section 47.1 of the current *Canadian Wheat Board Act*. As your Speaker, I will refrain from commenting on all aspects of the court decision in detail, which honourable senators are free to review as they wish. I will, however, note that the declaratory judgment states that "the validity of Bill C-18, and the validity and effects of any legislation which might become law as a result of Bill C-18 are not an issue in the present Application." The court demonstrated respect for institutional comity and for Parliament's independent capacity to legislate.

[Translation]

The Parliament of Canada consists of the Queen, the Senate and the House of Commons. The two chambers follow their respective Rules and Standing Orders in their deliberations, as is their duty.

Let us briefly review what happened with Bill C-18. The bill was introduced in the other place, and it was passed on November 28. The next day, the Senate received a message from the House of

Commons and, in accordance with the Rules of the Senate, the bill was placed on the Orders of the Day for second reading after the usual time period. The bill was then read a second time on December 1, and sent to the Agriculture and Forestry Committee. Meanwhile, on November 30, the Senate adopted a special order to determine the process to follow with regard to the committee's work on the bill.

[English]

Proceedings in the Senate on Bill C-18 have been in accordance with our rules and have been in order. The court decision has no bearing on our parliamentary proceedings, as was recognized. Moreover, as Senator Segal noted, there would be a risk that accepting a question of privilege of this nature could have the serious, and unintended, consequence of impeding the undoubted privilege of Parliament and parliamentarians to deliberate and to legislate freely.

[Translation]

As previously indicated, the putative question of privilege pertains to the introduction of Bill C-18.

• (1910)

Basically, this question involves the interpretation of law. Thus, it does not fall under the Speaker's authority. The chair refers to the fundamental principle that the Speaker can rule only on procedural matters and not on questions of law. Page 636 of the second edition of *House of Commons Procedure and Practice* says that constitutional questions or questions of law cannot be addressed to the Speaker. Other Canadian works on parliamentary procedure and other decisions rendered in this chamber have emphasized this point. For example, page 180 of the fourth edition of Bourinot and citation 324 in the sixth edition of Beauchesne were mentioned.

[English]

As already noted, proceedings on Bill C-18 in the Senate have respected our Rules and practices. While there has been a court decision respecting the current *Canadian Wheat Board Act*, if anything was at issue with respect to section 47.1, it did not involve Parliament. The issue is, in essence, a matter of interpretation of the law, not of parliamentary procedure or privilege. As such, it does not meet with the requirements of rule 43(1)(b), and there is no basis for determining that a prima facie question of privilege has been established.

[Translation]

## NATIONAL SECURITY AND DEFENCE

### COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(i), I move:

That the Standing Senate Committee on National Security and Defence have the power to sit until 8 p.m. on Monday, December 12, 2011, even though the Senate may then be sitting, and that Rule 95(4) be suspended in relation thereto.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Is it your pleasure, honourable senators to adopt the motion?

**Hon. Senators:** Agreed.

(Motion agreed to.)

## ADJOURNMENT

### MOTION ADOPTED

Leave having been given to revert to Government Notices of Motions:

**Hon. Claude Carignan (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Monday, December 12, 2011, at 6 p.m. and that rule 13(1) be suspended in relation thereto.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

(Motion agreed to.)

(The Senate adjourned until Monday, December 12, 2011, at 6 p.m.)



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